

EXHIBIT

1

In The Matter Of:
TERRY LYNN KING vs
TONY PARKER, et al.

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF EXECUTIONER
July 23, 2021

Gibson Court Reporting
606 West Main Street
Suite 350
Knoxville, TN 37902

Gibson 
COURT
REPORTING

Min-U-Script®

VIDEOTAPED VIDEOCONFERENCE DEPOSITION OF EXECUTIONER

July 23, 2021

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TERRY LYNN KING,)	
)	
Plaintiff,)	CAPITAL CASE
)	
vs.)	CASE NO.
)	3:18-CV-01234
TONY PARKER, et al.,)	
)	
Defendants.)	

APPEARANCES:

FOR THE PLAINTIFF:

ALEX KURSMAN, ESQ.
LYNNE LEONARD, ESQ.
HAYDEN NELSON-MAJOR, ESQ.
ANA BALDRIDGE, ESQ.
Assistant Federal Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545W
Philadelphia, Pennsylvania 19106

JEREMY A. GUNN, ESQ.
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201

1 APPEARANCES: (Continued)

2 FOR THE DEFENDANTS:

3 ROBERT W. MITCHELL, ESQ.
4 MALLORY K. SCHILLER, ESQ.
5 MIRANDA H. JONES, ESQ.
6 CODY N. BRANDON, ESQ.
7 DEAN S. ATYIA, ESQ.
Tennessee Attorney General's Office
P.O. Box 20207
Nashville, Tennessee 37202

8 ALSO PRESENT: David Jenkins, Videographer

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Gibson Court Reporting

S T I P U L A T I O N S

The videotaped videoconference deposition of EXECUTIONER, called as a witness at the instance of the Plaintiff, taken pursuant to all rules applicable to the Federal Rules of Civil Procedure by notice on the 23rd day of July, 2021, at 9:02 a.m. Central Time, before Rhonda S. Sansom, RPR, CRR, CRC, Licensed Court Reporter, pursuant to stipulation of counsel.

It being agreed that Rhonda S. Sansom, RPR, CRR, CRC, Licensed Court Reporter, may report the deposition in machine shorthand, afterwards reducing the same to typewriting.

All objections except as to the form of the questions are reserved to on or before the hearing.

It being further agreed that all formalities as to notice, caption, certificate, transmission, et cetera, including the reading of the completed deposition by the witness and the signature of the witness, are expressly waived.

I N D E X

E X A M I N A T I O N S

EXECUTIONER	PAGE
Examination by Ms. Leonard	7

E X H I B I T S

NO.	DESCRIPTION	PAGE
49	Defendant Tony Mays' Supplemental Response to Plaintiff's First Set of Interrogatories	103
50	Supplement to information in response to Interrogatory 8	108
57	Day of Execution - Lethal Injection Execution Recorder Checklist, re Billy Ray Irick, 8/9/18 Bates Def. Int. Discl. 000954 to 962	263
58	Lethal Injection Chemical Administration Record re Irick, Billy, 8/9/18 Bates Def. Int. Discl. 000963 to 966	276
59	8/10/18 Associated Press Article: "Tennessee death row inmate Billy Ray Irick apologizes before being executed"	272
60	Declaration of David A. Lubarsky, M.D.	267
61	Lethal Injection Chemical Administration Record re Johnson, Donnie, 5/16/17 Bates Def. Int. Discl. 000827 to 828	254
62	Chemical Preparation Time Sheet, 5/16/19 Bates Def. Int. Discl. 000831 to 832	173

1	63	Day of Execution - Lethal Injection	
2		Execution Recorder Checklist re Donnie	
3		Johnson, 5/16/19	
4		Bates Def. Int. Discl. 000818 to 826	250
5	64	Not Marked	N/A
6	65	Chemical Preparation Time Sheet,	
7		4/14/21	
8		Bates Defendants' 2nd Supplemental	
9		Response 0118 to 119	171
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 THE VIDEOGRAPHER: We are on the record
2 at 9:02 a.m. on July 23rd, 2021. This is the
3 deposition of Executioner taken remotely via Zoom
4 in the matter -- in the matter of Terry Lynn King
5 versus Tony Parker, et al., Case No. 3:18-CV-0124,
6 filed in the U.S. District Court, Middle District
7 of Tennessee, Nashville Division.

8 Counsel will state their names and
9 affiliation for the record and the court reporter
10 will swear in the witness.

11 MS. LEONARD: My name is Lynne Leonard.
12 I'm from the Federal Community Defender Office
13 from Philadelphia, Pennsylvania. And I'm
14 representing the plaintiff, Terry King, in this
15 case.

16 Several of my colleagues are also present
17 in the office here with me today. I have Hayden
18 Nelson-Major sitting with me, and Ana Baldrige.
19 And Alex Kursman is also appearing via Zoom.

20 MR. MITCHELL: And good morning. My name
21 is Rob Mitchell. I'm with the Tennessee Attorney
22 General's Office. I represent the defendants in
23 this case, Tony Parker and Tony Mays, as well as
24 the Executioner on this call.

25 With me in my office is cocounsel Scott

1 Sutherland. Some other attorneys in my office who
2 also represent defendants are on the call, as
3 well: Cody Brandon, Dean Atyia, Mallory Schiller,
4 and Miranda Jones.

5 MS. LEONARD: I'm sorry, I also should
6 have introduced Jeremy Gunn. I know Rhonda
7 interacted with Jeremy prior to the call, but he
8 is at Bass, Berry & Sims.

9 And Jeremy, I'm not sure if anyone else
10 is with you in your office?

11 MR. GUNN: It's just me.

12 (Technical pause.)

13 MR. MITCHELL: Executioner, you are on
14 mute right now.

15 THE WITNESS: Okay.

16 MR. MITCHELL: Ms. Sansom, maybe if I can
17 suggest maybe just repeating the questions about
18 the oath again, and we'll see if we can get a
19 response.

20 EXECUTIONER,
21 having been first duly sworn, testified as follows:

22 THE WITNESS: Yes, I do. Can you hear?

23 MS. LEONARD: All right. We can hear
24 you, I think.

25 EXAMINATION

1 BY MS. LEONARD:

2 Q. Good morning, Executioner. Do you mind
3 if I call you the Executioner?

4 A. No, ma'am.

5 Q. Okay. Good morning. My name is Lynne
6 Leonard. I'm an attorney at the Federal Community
7 Defender Office in Philadelphia, Pennsylvania.

8 And as you just heard, my colleagues and
9 I are representing the plaintiff in this case, King v.
10 Parker, et al., that's pending in the Middle District
11 of Tennessee.

12 Thank you for taking the time to answer
13 questions in this matter today. You understand that
14 you're here today to answer questions about the King
15 case, right?

16 A. I do.

17 Q. What is your understanding of what that
18 case is about?

19 A. The lethal injection process.

20 Q. Sorry, could you repeat that?

21 A. The lethal injection process.

22 Q. Okay. And what about the lethal
23 injection process?

24 A. Evidently, it's being challenged.

25 Q. Sorry, I'm just having a little bit of

1 trouble understanding you. Could you say that one more
2 time?

3 A. Evidently, it's being challenged.

4 Q. Okay. Got it. Thank you.

5 We're going to take this deposition on an
6 anonymous basis. And what that means is I'm not going to
7 ask you any questions intended to make you disclose your
8 identity.

9 To be clear, though, my understanding is
10 that you are the individual designated as the Executioner
11 in the lethal injection manual that's used by the
12 Tennessee Department of Corrections; is that right?

13 A. Yes, ma'am.

14 Q. And if I refer to the lethal injection
15 manual as the protocol, will you know what I'm
16 referring to?

17 A. Yes, ma'am.

18 Q. Okay. And is it also okay if I refer to
19 the Tennessee Department of Corrections as the TDOC?

20 A. Yes, ma'am.

21 Q. Great. Thanks a lot.

22 Have you ever had your deposition taken
23 before?

24 A. Yes.

25 Q. How many times?

1 A. I don't recall.

2 Q. Was it more -- more than twice?

3 A. As I recall, just two.

4 Q. Sorry, what's that?

5 A. Just two.

6 Q. Just two? Okay. And when did those take
7 place? Not exact years or dates; but were they
8 recently, were they longer ago?

9 A. One was three, four months ago. The
10 other was early 2000s.

11 Q. Okay. And what types of cases were
12 those? Again, without identifying the name of the
13 case; but was it a civil case, a criminal case?

14 A. It was one with challenging the process
15 for execution. One was for the housing of death row
16 inmates.

17 Q. Okay. Great. So your attorney may have
18 gone over some of these topics with you already. And
19 it sounds like you have participated in a deposition
20 similar to this one relatively recently, but I am still
21 going to review some ground rules with you just to make
22 sure we're on the same page.

23 Do you understand that you're under oath?

24 A. Yes.

25 Q. And you understand that that means you

1 need to tell the truth to the best of your ability?

2 A. Yes.

3 Q. Is there any reason that you cannot
4 testify truthfully or accurately today?

5 A. No, ma'am.

6 Q. Are you feeling ill?

7 A. No, ma'am.

8 Q. Are you taking any medication that might
9 affect your ability to recall facts or give accurate
10 testimony today?

11 A. No, ma'am.

12 Q. Are you represented by counsel today?

13 A. Yes.

14 Q. Who is your counsel?

15 A. Mr. Mitchell and Mr. Sutherland.

16 Q. Is anyone in the room with you right now?

17 A. No.

18 Q. Okay. Please let us know if anyone does
19 come into the room at any point today.

20 Also, are you communicating with anybody
21 via text message or other Internet message?

22 A. No, ma'am.

23 Q. Okay. Please let us know -- again
24 throughout the deposition, given the conditions that
25 we're taking this deposition under, please feel free to

1 let us know if someone comes into the room or otherwise
2 tries to contact you.

3 A. Yes, ma'am.

4 Q. And even though the deposition is being
5 taken over Zoom the court reporter is making a record
6 based on what you say, so you'll need to respond to
7 questions verbally. And in order for the court
8 reporter to accurately record your testimony, it is
9 important that we not speak over one another.

10 A. Yes, ma'am.

11 Q. So please, when I'm asking a question,
12 just wait for me to finish my question. And I'll make
13 sure to do the same thing for you and wait for you to
14 finish your answer before I ask my next question.

15 A. Okay.

16 Q. If you don't understand a question, just
17 let me know and I will clarify. But if you do answer a
18 question, I'll assume that you understood the question.
19 Is that okay?

20 A. Yes, ma'am.

21 Q. All right. And if you need to take a
22 break at any time, please just let me know.

23 A. Yes, ma'am.

24 Q. The -- the only sort of exception to that
25 is if there's a question pending we'll ask that you

1 answer the question before we go off the record. Do
2 you understand that?

3 A. Yes, ma'am.

4 Q. And your lawyer may object to my
5 questions from time to time, but you will still need to
6 answer those questions unless the objection is based on
7 a privilege assertion or based on statute. Do you
8 understand that?

9 A. Yes.

10 Q. Do you have any questions for me right
11 now?

12 A. No.

13 Q. I'm sorry, was there a response to that?

14 A. Yes. No, I don't have any questions.

15 Q. Thank you.

16 (Technical pause.)

17 MS. LEONARD: Executioner, would you mind
18 just saying "Hello, my name is Executioner. This
19 is a test?"

20 THE WITNESS: Hello, my name is
21 Executioner.

22 MS. LEONARD: Is that okay for everyone?
23 Okay. Thank you. I appreciate that.

24 BY MS. LEONARD:

25 Q. Executioner, what did you do to prepare

1 for this deposition today?

2 A. Had a predeposition meeting with
3 Mr. Sutherland and Mr. Mitchell.

4 Q. Was that only one meeting?

5 A. Yes.

6 Q. How long did the meeting last?

7 A. Three or four hours.

8 Q. Was anyone else present, aside from
9 Mr. Sutherland and Mr. Mitchell?

10 Executioner, can you hear us?

11 A. Yes. I said "No."

12 Q. Okay. Did you review any documents
13 during the meeting with Mr. Mitchell and
14 Mr. Sutherland?

15 A. Yes.

16 Q. Approximately how many documents did you
17 review?

18 A. We reviewed the protocol and some of
19 the -- the exhibits that --

20 MS. LEONARD: I'm sorry, we're having --
21 a firearm alarm is going off in our office. Hang
22 on. I'm sorry. One second.

23 (Technical pause.)

24 MS. LEONARD: I'm sorry, I'm going to
25 reask the question. I didn't hear a lot of what

1 the Executioner said when the alarm started going
2 off here. I apologize for that.

3 BY MS. LEONARD:

4 Q. I was asking what documents did you
5 review during the meeting with Mr. Mitchell and
6 Mr. Sutherland?

7 A. The protocol and some of the exhibits
8 that would be presented. And the instructions from the
9 pharmacist about mixing the chemicals.

10 Q. Okay. And did those documents refresh
11 your recollection about issues in this case?

12 A. Yes.

13 (Technical pause.)

14 MS. LEONARD: It's back. I think maybe
15 we should go off the record for a second.

16 THE VIDEOGRAPHER: We are off the record
17 at 10:14 a.m.

18 MS. LEONARD: Thank you.

19 THE VIDEOGRAPHER: 9:14 a.m. I'm sorry.

20 (Recess at 9:14 a.m. to 9:17 a.m.)

21 THE VIDEOGRAPHER: We're back on the
22 record at 9:17 a.m.

23 BY MS. LEONARD:

24 Q. I apologize for the delay, Executioner.
25 I was asking about your preparation --

1 preparations for the deposition, and I'm wondering how
2 much time in total do you estimate that you spent
3 preparing for this deposition?

4 A. Six hours.

5 Q. I'm sorry, was that 10 hours?
6 Executioner?

7 A. No, six.

8 Q. I'm having a little trouble understanding
9 you. Could you repeat that?

10 A. It was six hours.

11 Q. I still did not quite catch that.

12 A. I said six hours.

13 MS. LEONARD: Am I the only person that's
14 having trouble hearing this?

15 MR. KURSMAN: This is Alex Kursman. Can
16 we go off the record?

17 THE VIDEOGRAPHER: We are off the record
18 at 9:18 a.m.

19 (Recess at 9:18 a.m. to 9:22 a.m.)

20 THE VIDEOGRAPHER: We're back on the
21 record at 9:22 a.m.

22 BY MS. LEONARD:

23 Q. How much time in total do you estimate
24 that you spent preparing for this deposition?

25 A. Probably five to six hours.

1 Q. Okay. And did you review any materials
2 on your own to prepare for this deposition?

3 A. Yes.

4 Q. What materials did you review on your
5 own?

6 A. The protocol.

7 Q. And did you meet with anyone other than
8 your attorneys to prepare for this deposition?

9 A. No.

10 Q. Did you discuss this deposition with
11 anyone other than your attorneys?

12 A. No.

13 Q. Did you review the transcripts of any
14 other depositions taken in this case?

15 A. No.

16 Q. Did anyone consult with you to prepare
17 for his or her deposition in this case?

18 A. No.

19 Q. Did you review any of the papers that
20 have been filed with the Court in this case?

21 A. No.

22 Q. What is your highest level of education?

23 A. High school.

24 Q. I'm sorry, could you repeat that?

25 A. High school.

1 Q. High school? Thank you.

2 And did you go to -- did you get any
3 special training at your high school? For example, was
4 it a cooking school or a tech school or a STEM school?

5 A. No.

6 Q. It was just a regular high school?

7 A. Just a regular high school.

8 Q. Have you completed any other school?

9 A. For --

10 Q. Any other --

11 A. For Corrections?

12 Q. Sorry, what's that?

13 A. For Corrections? For the Department of
14 Correction?

15 Q. Yes. I'm curious about those, yes.

16 A. Yes, I have completed numerous classes
17 and courses. Leadership, SERT. Basically, I manage
18 the Emergency Response Team. Disciplinary Board.
19 Numerous different classes and certifications.

20 Q. Okay. And what certifications are those?

21 A. They're certified by Tennessee
22 Corrections Academy to be an advisor, a SERT team
23 member, disciplinary board chairperson, and numerous
24 other functions within the department.

25 Q. And can you tell me what "SERT" stands

1 for? Is that C-E-R-T?

2 A. It is Special Emergency Response Team.

3 Q. And is that medical training?

4 A. No.

5 Q. What kind of training is that?

6 A. It's to respond to any emergency
7 situation in a prison; escapes, riots, potential
8 situations.

9 Q. I'm sorry, I'm not sure I caught all the
10 end of that. Could you repeat that?

11 A. Any type of emergency situation; riots,
12 escapes, hostage. Those types of different situations
13 for emergency response.

14 Q. Okay. Thank you. And do you have any
15 military training?

16 A. No.

17 Q. Do you participate in any volunteer
18 programs?

19 A. Such as?

20 Q. A volunteer firefighter, a soup kitchen
21 in your community; any sort of volunteer programs,
22 without telling me specifically what those -- the
23 department or the group is.

24 A. The only thing would be something like
25 coaching Little League baseball.

1 Q. Okay. Great.

2 And do you have any medical training,
3 whether it was through the prison or otherwise?

4 A. Some. I went through --

5 Q. Some?

6 A. Yes. I went through an IV therapy class.

7 Q. I'm sorry, what type of therapy?

8 A. IV.

9 Q. One more time?

10 A. IV, intravenous --

11 Q. Okay. Got it.

12 A. -- therapy class.

13 Q. And other than executions, have you
14 handled chemicals?

15 MR. MITCHELL: Object to form. You can
16 answer, Executioner.

17 THE WITNESS: What type of chemicals?

18 BY MS. LEONARD:

19 Q. Any type of chemicals.

20 A. Yes. I mean, I grew up on a farm, so we
21 were using chemicals around the farm.

22 Q. What type of chemicals do you use around
23 a farm?

24 A. Well, when we grow tobacco there was
25 chemicals to kill suckers. There was -- I guess

1 fertilizer would be a chemical. Vaccinate cattle,
2 hogs, that kind of stuff.

3 THE COURT REPORTER: I'm sorry, I need
4 him to repeat after he said "I guess fertilizer
5 would be a chemical."

6 THE WITNESS: And vaccinate the animals;
7 the cattle, hogs.

8 BY MS. LEONARD:

9 Q. Okay. And have you prepared syringes?

10 A. Yes.

11 Q. What type of syringes?

12 A. I don't understand the question.

13 Q. In what context have you prepared
14 syringes?

15 A. For vaccinating animals or in lethal
16 injection?

17 Q. For vaccinating animals.

18 A. You draw the medicine, the vaccination,
19 out of the bottle into the syringe.

20 Q. And how large are those syringes?

21 A. It varied on what you were using them
22 for.

23 Q. What type of animals were you
24 vaccinating?

25 A. We raised cattle and hogs.

1 Q. And I imagine the syringes for the cattle
2 were quite large; is that right?

3 A. It all depends. Some were small. It
4 depends on what kind of medicine you were vaccinating
5 them with.

6 Q. What was -- well, what was the range of
7 size of syringes you were using?

8 A. Probably 10 cc up to 40 cc.

9 Q. Up to 40 cc?

10 A. Yes.

11 Q. And what were the smallest size?

12 A. Probably 10. A couple were at 4 cc.

13 Q. Okay. How long ago were you vaccinating
14 animals?

15 A. Probably 25 years.

16 Q. And have you vaccinated any animals since
17 that time?

18 A. No.

19 Q. Other than vaccinating animals, have you
20 had any other experience with syringes or vaccinations?

21 A. None, other than using them with the
22 lethal injection.

23 Q. Right. Okay.

24 THE COURT REPORTER: I'm sorry, I didn't
25 get that answer.

1 THE WITNESS: None, other than using them
2 in the lethal injection process.

3 BY MS. LEONARD:

4 Q. And do you have any other type of medical
5 training? I think you said "No." Are you trained in
6 CPR or any other sort of medical certification?

7 A. Yes, I have been trained in CPR.

8 Q. Are you certified in CPR?

9 A. Not at this time.

10 Q. Have you been certified in the past in
11 CPR?

12 A. Numerous times.

13 Q. When was the most recent time that you
14 held that certification?

15 A. I couldn't remember. Probably 2015.

16 I do have another training in medical.
17 When I was a junior in high school I went to a college,
18 a -- a medical course and became a certified EMT. That
19 was in the late '70s.

20 Q. In the late '70s, you said?

21 A. Yes, yes.

22 Q. And were you a certified EMT at any point
23 more recently than when you were a junior in high
24 school?

25 A. No.

1 Q. How long did you serve as an EMT?

2 A. A little over one year.

3 Q. And did you have experience with syringes
4 in your capacity as an EMT?

5 A. At one point EMTs didn't do that, no.

6 Q. What type of work did you do when you
7 were an EMT?

8 A. It was pretty much responding to car
9 accidents, emergency situations. And it was pretty
10 much pick up, bandage up, get them to the hospital.

11 Q. I understand.

12 Are you currently employed, Executioner?

13 A. Yes.

14 Q. Are you employed by the TDOC?

15 MR. MITCHELL: I'm going to object and
16 instruct the Executioner not to answer, pursuant
17 to the Court's protective order, Document Entry
18 107, 108, Page ID 5116, where it talks about the
19 motion for the protective order will be granted
20 for people who participate in the preparation or
21 administration of drugs during executions. And
22 that plaintiff is prohibited from seeking
23 information, through depositions or other forms of
24 discovery, that is calculated or otherwise likely
25 to lead to the identification of pseudo- --

1 pseudoanonymously -- pseudoanonymously identified
2 individuals.

3 So do not answer, Executioner.

4 BY MS. LEONARD:

5 Q. Are you a corrections officer?

6 MR. MITCHELL: Same -- same objection.

7 Do not answer, Executioner.

8 BY MS. LEONARD:

9 Q. Executioner, you mentioned earlier that
10 you have special training in your position, including
11 SERT training. Is there any additional training that
12 you have?

13 A. I don't know specifically what you're
14 looking for. I have been trained in numerous areas,
15 and we've already spoke about some of those, so....

16 Q. I'm curious what the rest are. Could you
17 describe what the other areas of training you've had
18 are?

19 A. Incident command. Without a list in
20 front of me, I don't recall all the training I've had.

21 Q. Could you tell me off the top of your
22 head what training you've had, everything you can think
23 of?

24 A. Different --

25 MR. MITCHELL: Object to the form. You

1 can answer, Executioner.

2 THE WITNESS: Incident report, roster
3 management, SERT, incident command, leadership are
4 just some of the ones I can think of off the top
5 of my head.

6 BY MS. LEONARD:

7 Q. But that's not an exclusive list?

8 A. Exclusive list?

9 Q. I mean --

10 (Technical pause.)

11 THE VIDEOGRAPHER: We're off the record
12 at 9:35 a.m.

13 (Recess at 9:35 a.m. to 9:55 a.m.)

14 THE VIDEOGRAPHER: We're back on record
15 at 9:55 a.m.

16 BY MS. LEONARD:

17 Q. Executioner, have you been involved in
18 prior executions?

19 A. 13.

20 Q. I'm sorry, what was that?

21 A. 13.

22 Q. 13? Were you the executioner in all 13
23 of these executions?

24 A. 12. I was in 12 of them.

25 Q. You were the executioner in 12 of the

1 executions? Is that what you're saying?

2 A. Yes.

3 Q. And what was your role in the 13th
4 execution?

5 A. Recorder assistant.

6 Q. Were you the recorder assistant in the
7 first execution you ever did?

8 A. I believe that is correct.

9 Q. What year was that?

10 A. I think --

11 MR. MITCHELL: Objection. Executioner,
12 don't answer what year that was pursuant to the
13 Court's protective order, DE107.

14 BY MS. LEONARD:

15 Q. Where did these executions take place?

16 A. Riverbend Maximum Security Prison.

17 Q. When was the most recent execution you
18 participated in?

19 A. I'm trying to think. The year before
20 last, maybe. I don't recall the exact year.

21 Q. Okay. So maybe 2019 or 2018, somewhere
22 around there?

23 A. Yes, yes, somewhere around.

24 Q. And were you the executioner in Donnie
25 Johnson's execution?

1 A. Yes.

2 Q. Were you the executioner in Billy Ray
3 Irick's execution?

4 A. Yes.

5 Q. Had you provided training to anyone that
6 was involved in any of these executions that you've
7 been involved in?

8 A. We train every month.

9 Q. Sorry, you said three trainings every
10 month? Am I hearing you correctly?

11 A. We train every month.

12 Q. You train every month?

13 A. Yes.

14 Q. Okay. I understand.

15 How many --

16 MS. LEONARD: I'm sorry, I'm going to go
17 on mute.

18 (Technical pause.)

19 MS. LEONARD: I apologize. Hopefully,
20 we're through that.

21 For the benefit of the record, there was
22 unplanned fire alarm testing going on in our
23 building, and unfortunately we're in a situation
24 where it should end soon. But we've agreed to
25 proceed with the deposition, and if the alarm

1 interrupts us we'll just take a few-second break
2 to make sure that the questions and the answers
3 are all able to be clearly heard.

4 BY MS. LEONARD:

5 Q. Executioner, do you provide the training
6 for -- that happens every month?

7 A. I train the people in the room with me.
8 We receive training from a -- excuse me -- training
9 from a certified EMT once a year.

10 Q. Who are the people that are in the room
11 with you?

12 MR. MITCHELL: Executioner, do not -- and
13 I'm going to personally -- do not use names. But
14 if you can describe those people or their -- or
15 their roles, that is okay. But I'm going to
16 instruct, pursuant to the protect order, not to
17 use anyone's name.

18 THE WITNESS: There is myself, the
19 executioner; recorder; and I have another set of
20 eyes, an observer to help watch what's going on.

21 BY MS. LEONARD:

22 Q. So there are three people total in the
23 room, including you?

24 A. Yes, ma'am.

25 Q. And you train the recorder and the

1 observer?

2 A. Yes, ma'am.

3 Q. And the certified EMT trains all three of
4 you; is that correct?

5 A. In what to look for in the execution; if
6 there's a problem with the vein, finding the vein.
7 What to look for, that kind of stuff.

8 Q. Okay. And just so I'm clear, that
9 training happens once a year? Is that what you said?

10 A. It says -- I believe the protocol says --
11 it'll say once a year. I don't know if there's a time
12 limit, but we do it about once a year.

13 Q. You do it about once a year?

14 A. Yes.

15 Q. And are there additional trainings
16 leading up to a scheduled execution?

17 A. The whole execution team trains once a
18 month. When a date is set, the amount of training
19 increases for that month.

20 Q. And how does it increase?

21 A. At the warden's discretion. The warden
22 says we may do two a week, or two or three the week
23 before the date of the execution.

24 Q. In the last execution you participated
25 in, how many trainings did you do in the week leading

1 up to that?

2 A. Do not recall.

3 Q. Was -- did you do at least one training
4 in the week leading up to that?

5 A. Yes.

6 Q. Did you do two trainings?

7 A. I think so, but I don't recall.
8 Normally, that's what we do.

9 Q. And that was in addition to your regular
10 monthly training?

11 A. Yes, I think so.

12 Q. And does the certified EMT participate in
13 those trainings that lead up to the scheduled
14 execution?

15 A. Yes.

16 Q. And the certified EMT attends all of
17 those?

18 A. Yes.

19 Q. And what's the certified EMT's role in
20 those trainings?

21 A. To start the IV, insert the IV catheter.

22 Q. Wait, I'm sorry, I was -- it was a little
23 bit garbled. Could you start that response again?

24 A. They start and insert the IV catheter.

25 Q. The certified EMT starts the IV catheter?

1 A. Yes.

2 Q. Does anyone else? The three people you
3 mentioned -- you, the recorder, and the observer -- do
4 any of you ever start the IV catheter during the
5 training?

6 A. I've trained to do it in emergency
7 situations.

8 Q. You've been trained to do it in emergency
9 situations, but you don't regularly do it during --

10 A. No, not regularly. No, ma'am; not
11 regularly. We have authority, but it's not the normal.

12 Q. How many times have you done it before,
13 approximately?

14 A. I couldn't tell you. I used to do it
15 more than what I have the last five or six years. I
16 can't give you -- I can't -- we used to do it maybe
17 once or twice a quarter.

18 Q. And when you say --

19 A. And I had --

20 Q. I'm sorry. Go ahead.

21 A. But that was with a different team. With
22 the team I'm with now, I don't think we ever have
23 started one.

24 Q. And has it been the same team for the
25 past five or six years?

1 A. Yes. Well....

2 Q. Prior to that --

3 A. The last -- last three or four, yes, the
4 same team.

5 Q. Okay. So just so I'm clear, it's been
6 the last -- the same team the last three or four years.
7 But you haven't -- none of you on the team have had to
8 insert the IV catheter for about the past five or six
9 years, roughly?

10 A. No no, the IV team never had. We've been
11 trained to and we have started them, but not during an
12 execution.

13 Q. Have you ever personally inserted the IV
14 catheter during an actual execution?

15 A. No.

16 Q. Has the recorder that's with you ever
17 personally inserted the IV catheter during an
18 execution?

19 A. No.

20 Q. Has the observer ever personally inserted
21 the IV catheter during an execution?

22 A. No.

23 Q. Has it always been the certified EMT that
24 inserts the IV catheter during an actual execution?

25 A. In every one that the State of Tennessee

1 has done, it's always been the certified EMT.

2 Q. Okay. How long have you been the
3 executioner in Tennessee?

4 MR. MITCHELL: Again, I'm going to object
5 to that question and instruct the Executioner not
6 to answer pursuant to the protective order, Page
7 ID 5116.

8 BY MS. LEONARD:

9 Q. Are you the only executioner in
10 Tennessee?

11 A. I'm the only one that has done one.

12 Q. What do you mean by that?

13 A. I mean, I'm the only one that has
14 actually done an execution. The --

15 Q. You're the --

16 A. One of the -- one or two of the people in
17 the room with me has watched me, they help set
18 everything up. They have been trained. And I am the
19 only one.

20 Q. Okay. So you are the only person on the
21 current team that has ever done an actual execution?

22 A. I am the only one that's done an
23 execution, yes.

24 Q. Okay. I'm just trying to make sure that
25 my understanding is clear. So you are the only person

1 with the title of executioner that has ever done an
2 execution?

3 A. Yes.

4 Q. And so the other team members -- the
5 recorder, the observer -- have they had past experience
6 in executions?

7 A. They have been with me when the last two
8 were done.

9 Q. And so it was the same individuals? The
10 recorder and the observer --

11 A. Yes.

12 Q. -- were the same individuals in the most
13 recent two executions? Is that what you're saying?

14 A. Yes.

15 Q. Okay. Thanks.

16 Do you receive compensation for your work
17 as executioner?

18 A. No.

19 Q. Is there a time at which you will no
20 longer be the executioner?

21 A. Except for --

22 MR. MITCHELL: Excuse me, Executioner.

23 One, I'm going to object to the form. Two, more
24 materially, I'm also going to object on the basis
25 of the Court's protective order DE107 and instruct

1 the Executioner not to answer.

2 BY MS. LEONARD:

3 Q. Do you hold any other roles in
4 Tennessee's execution procedures?

5 A. No.

6 Q. You mentioned that you'd prepared, in
7 part, by looking at the protocol. When did you first
8 become aware of that protocol?

9 A. When it was first written. That would be
10 the first execution.

11 Q. The first distribution? And do you
12 recall --

13 A. I said the first execution.

14 Q. The first execution? I'm sorry.
15 When you say "the first execution," do
16 you mean the first execution that you did?

17 A. The first the State of Tennessee did.

18 Q. And do you remember around what year that
19 was?

20 MR. MITCHELL: Again, I'm going to object
21 again pursuant to the protective order and
22 instruct the Executioner not to answer that.

23 BY MS. LEONARD:

24 Q. When did you first read this protocol?

25 A. When it was first written.

1 Q. And do you remember around when that was?

2 A. Early 2000.

3 Q. And is the State required to follow this
4 protocol?

5 A. Yes.

6 Q. And who authorized the State to conduct
7 executions under this protocol?

8 A. I'm not sure I understand the question.

9 Q. Do you know who wrote this protocol?

10 A. Probably the TDOC legal team.

11 Q. Okay. And do -- is the State allowed to
12 conduct executions using anything other than this
13 protocol?

14 MR. MITCHELL: Object to the form. You
15 can answer.

16 THE WITNESS: I'm sorry?

17 MR. MITCHELL: I objected to the form,
18 but you can answer the question, Executioner.

19 THE WITNESS: Not that I'm aware of.

20 BY MS. LEONARD:

21 Q. Okay. Do you know whether Tennessee is
22 authorized to use electrocution for executions?

23 A. Whether they're authorized? The State?

24 Q. Yes, whether the State is allowed to --

25 A. Yes.

1 Q. -- legally?

2 A. Yes.

3 Q. Yes, they are allowed to use
4 executions for -- electrocution for executions?

5 A. Rarely.

6 Q. Is there a protocol for that?

7 A. Yes.

8 Q. Have you read that protocol?

9 A. Yes.

10 Q. Are you also the executioner when
11 electrocution is used?

12 A. Yes.

13 Q. Do you have any other roles when
14 electrocution is used?

15 A. No.

16 Q. And what is your role as the executioner
17 in electrocution? What do you do in that position?

18 MR. MITCHELL: Object to the form. You
19 can answer.

20 THE WITNESS: It's I have to take the
21 control panel that starts the process.

22 BY MS. LEONARD:

23 Q. And can you describe a little bit more
24 what you mean by "the control panel that starts the
25 process?" Do you -- can you explain to me a little bit

1 more? I don't want to put words in your mouth. What
2 do you mean by that?

3 A. There's a -- it's called the main breaker
4 switch. There's one key with three different key
5 positions on the power panel.

6 You turn the power on, set it for
7 activation. You set it for default, and you push the
8 button to start the process.

9 Q. Okay. How many executions have you
10 performed using electrocution?

11 A. I don't know.

12 Q. Has it -- is it more than one?

13 A. Yes.

14 Q. More than two?

15 A. I have done all of them since we started
16 back using the electric chair.

17 Q. Is that more than 10?

18 A. No.

19 Q. Is it more than five?

20 A. I think so. I -- I have been involved in
21 all of them. I don't remember which ones were lethal
22 injection, which ones were electrocutions. I don't
23 keep count.

24 Q. Okay. So of the 13 executions you
25 mentioned earlier, were all of those 13 lethal

1 injection?

2 A. No.

3 Q. So some of those were electrocution?

4 A. Yes.

5 Q. Okay. Would you say about half of those
6 were lethal injection?

7 A. I think probably around half, five or
8 six.

9 Q. Okay. I'm going to talk -- focus with
10 you more on the lethal injection protocol. Were you
11 involved in creating this protocol?

12 A. Yes.

13 Q. How did you participate in creating this
14 protocol?

15 A. The construction of the IV lines in that
16 process.

17 Q. So you mean that you helped create the
18 portions of the protocol that described that process?

19 A. Yes.

20 Q. Who else was involved in creating the
21 protocol?

22 A. I don't recall.

23 MR. MITCHELL: Object, based on the
24 protective order. Executioner, if you can answer
25 without giving names but you can somehow describe

1 that.

2 THE WITNESS: I don't recall it, other
3 than the TDOC Legal Department.

4 BY MS. LEONARD:

5 Q. Okay. Do you remember roughly how many
6 people were involved in the process?

7 A. No.

8 Q. I'm sorry, if you responded I don't think
9 I caught that.

10 A. No, I don't remember.

11 Q. Was it more than five people?

12 A. I don't remember. I was given my section
13 to take care of and gave it back to whoever, Legal.

14 Q. Okay. I understand. Did you ever have
15 meetings with anyone else who was creating the
16 protocol?

17 A. I don't recall. Probably, but I don't
18 remember.

19 Q. Do you remember discussing the protocol
20 with anyone else who was working on it?

21 A. When?

22 Q. At any --

23 A. When it was being developed?

24 Q. Yes, exactly.

25 A. That'd be Felix would be the only one.

1 Q. I'm sorry, who's that? Not -- not the
2 name, I just didn't hear the --

3 A. The -- the TDOC legal counsel.

4 Q. Okay. I see. Thanks.

5 Did you consult with doctors?

6 A. Not that I recall.

7 Q. Did you consult with -- other than TDOC,
8 did you consult with lawyers?

9 A. At one time there was a nurse, an RN, at
10 Riverbend that was somewhat involved in the process.

11 I also went to another state, witnessed
12 an execution, talked with the executioner and people
13 involved there to look at how they set their -- set
14 theirs up. And we did basically the same thing they
15 were doing.

16 I also went to a federal prison as they
17 were conducting practice and watched them set up their
18 process, how they did it, and was able to ask them
19 questions.

20 So there's the way I learned how to do it.

21 Q. Is the nurse that you talked about still
22 at Riverbend?

23 A. No.

24 Q. How long ago did you talk with her about
25 the protocol, roughly? Approximate.

1 A. 1998.

2 Q. And is that --

3 A. 2000. Somewhere in there, when it was
4 being developed.

5 Q. Is that around the same time that you
6 visited another state?

7 A. Yes.

8 Q. Did you ever -- did you only ever take
9 one trip to another state to watch an execution?

10 A. One trip to one state. One trip -- the
11 second trip was to another state, but a federal prison.

12 Q. Right. And which state did you visit?

13 MR. MITCHELL: I'm going -- I'm going to
14 object and instruct the witness not to answer,
15 again based on the protective order, DE107, Page
16 ID 5116.

17 BY MS. LEONARD:

18 Q. And when you went to the federal prison,
19 did you say that you saw only a practice session there,
20 not an actual execution?

21 A. Yes. They were preparing for an
22 execution.

23 Q. Okay. So you've only witnessed an
24 execution in another state one time?

25 A. Correct.

1 Q. Okay. Was there anything else that you
2 relied on when you were creating your portions of the
3 protocol?

4 A. Not that I recall.

5 Q. Okay. Did you ever read --

6 A. The EMT -- the EMTs were there. The
7 nurse was there. I watched two other states do the
8 process, so that's how I learned how to do it.

9 Q. Okay. When you say that the EMTs and the
10 nurse were there, do you mean they were with you
11 watching the execution in the other state?

12 A. No, when we first practiced setting up
13 our IV lines.

14 Q. I see. Okay. So back around 1998 or
15 2000, when you were first --

16 A. Yes.

17 Q. -- first consulting with the nurse?

18 Okay. I understand.

19 Did you consult any articles or textbooks?

20 A. No.

21 Q. And do you know around when the protocol
22 was most recently revised?

23 A. I think it's 2015.

24 Q. Were you asked to consult about these
25 revisions?

1 A. I don't recall. I may have.

2 Q. Do you recall whether you were involved
3 at all in revising the protocol?

4 A. I don't recall. I may have.

5 MS. LEONARD: Okay. I'm going to pull up
6 Exhibit 1, which is the Tennessee Lethal Injection
7 Protocol.

8 For the court reporter's benefit, this
9 should be the same Exhibit 1 that we used in the
10 previous deposition on Monday.

11 BY MS. LEONARD:

12 Q. Executioner, do you have this in front of
13 you?

14 A. Is it, did you say, Exhibit 1?

15 Q. Yes, Exhibit 1.

16 A. Yes, yes.

17 Q. Okay. Do you need a minute to look
18 through it?

19 A. I don't think so.

20 Q. Okay. You had indicated earlier that you
21 just reviewed this recently in preparation for today;
22 is that right?

23 A. Right.

24 Q. So are you familiar with the contents of
25 this protocol?

1 A. Yes.

2 Q. Have you read this in its entirety?

3 A. I have, and I also paid more attention
4 to my role in the protocol.

5 Q. I'm sorry, I didn't catch the back half.
6 I caught "I paid more attention," and then it trailed
7 off.

8 A. I more focused on my role in the
9 protocol.

10 Q. Okay. I understand. I see.
11 When was the last time that you read this
12 in its entirety?

13 A. Yesterday.

14 Q. Yesterday? Have you read this more than
15 once?

16 A. Yes.

17 Q. Okay. And what do you understand the
18 purpose of this document to be?

19 MR. MITCHELL: Object to form.

20 THE WITNESS: It's instructions for doing
21 an execution by lethal injection.

22 BY MS. LEONARD:

23 Q. All right. I'm going to direct your
24 attention to Page 6. Will you let me know when you get
25 there?

1 A. Okay.

2 Q. Okay. I'm looking at the last sentence
3 above the signature that starts with "It will be." Do
4 you see that?

5 A. The last sentence?

6 Q. The last sentence.

7 A. "It will be annually reviewed?"

8 Q. Yes. So that sentence says: "It will be
9 reviewed annually or as needed by a designated panel."
10 Are you on the panel?

11 A. I don't know.

12 Q. Who is on the panel?

13 A. I don't know.

14 MR. MITCHELL: I'm going to object and
15 instruct the witness not to answer who was on the
16 panel, pursuant to the protective order.

17 BY MS. LEONARD:

18 Q. Has the protocol been reviewed by the
19 panel since 2018?

20 A. I don't know. I don't know who the panel
21 is.

22 Q. I'm going to move down to Page 8. Are
23 you on Page 8?

24 A. I am.

25 Q. Okay. On Page 8, I'm looking at the

1 definition of "Execution Team" in the middle of the
2 page. Do you see that?

3 A. I do.

4 Q. And in the list there, executioner is one
5 of the roles identified. Is that your role?

6 A. Yes.

7 Q. And without identifying them, without
8 saying anybody's names, do you know who is in the other
9 roles?

10 MR. MITCHELL: Object to the form. You
11 can answer.

12 THE WITNESS: I know who is in the -- I
13 know -- I don't know their names personally, but I
14 know what their roles are.

15 BY MS. LEONARD:

16 Q. Okay. And so in that list -- warden,
17 associate warden, extraction team, death watch team --
18 you know who those individuals are? Again, don't tell
19 me their names, but you know who they are?

20 A. Well, I know who they are, but I don't
21 know all their names. So yes.

22 Q. Okay. I see. I see.

23 Is each of those roles always filled by
24 the same person?

25 A. The people -- the extraction team

1 officers may change, depending on people quit or
2 resigning. But I would say we probably use the same
3 people always.

4 Q. Okay. And does every person on this list
5 have previous execution experience?

6 A. I don't know.

7 MR. MITCHELL: Object to the form. You
8 can answer.

9 THE WITNESS: I don't know.

10 BY MS. LEONARD:

11 Q. Do you think that they should?

12 MR. MITCHELL: Object to the form. You
13 can answer.

14 THE WITNESS: I don't know how you get
15 experience without being there. The warden is
16 there, associate warden. The extraction team,
17 most of those. The IV team, most of those.

18 Those are -- they're normally -- there's
19 not a lot of turnover in any of those, but there
20 is some turnover in personnel.

21 BY MS. LEONARD:

22 Q. That makes sense.

23 Is anyone going to be doing an execution
24 for the first time?

25 MR. MITCHELL: Object to the form. You

1 can answer.

2 THE WITNESS: I don't know. They're --
3 they're -- they....

4 BY MS. LEONARD:

5 Q. Do you feel that your previous execution
6 experience has been beneficial in understanding how
7 executions work?

8 MR. MITCHELL: Object to form. You can
9 answer.

10 THE WITNESS: I don't -- I don't totally
11 understand the question.

12 BY MS. LEONARD:

13 Q. Before, you'd indicated that you have had
14 experience in 13 executions. Do you feel that that's
15 helped you get better at the process?

16 MR. MITCHELL: Same objection.

17 THE WITNESS: I don't know that anything
18 has changed much since we started. The process
19 has been pretty much the same, except for the
20 chemicals used.

21 BY MS. LEONARD:

22 Q. Okay. I see.

23 I'm going to move down to Page 10, which is
24 a diagram. Will you let me know when you're on Page 10?

25 A. Okay.

1 Q. Okay. So I just -- I'm trying to just
2 understand this. I have not yet been there, so if you
3 could just bear with me and be patient.

4 Have you seen this blueprint before today?

5 A. Yes.

6 Q. When's the last time that you looked at
7 it?

8 A. I was in the building last week.

9 Q. Okay. And have you looked at that
10 particular drawing or diagram?

11 A. I have.

12 Q. And did you look at this --

13 A. I'm trying to.

14 Q. I'm sorry?

15 A. It's sideways. Hold on.

16 Q. If you right click, Executioner --

17 A. I've got it. I've got it. I'm good.

18 Q. You've got it? Okay. Great.

19 Is this an accurate diagram of the
20 Capital Punishment Unit?

21 A. Yes.

22 MR. MITCHELL: Object to form. You may
23 answer.

24 THE WITNESS: Yes, it is.

25 BY MS. LEONARD:

1 Q. What is the distance between the gurney
2 and the executioner's room?

3 MR. MITCHELL: Same objection.

4 BY MS. LEONARD:

5 Q. You can answer, Executioner.

6 A. I'm thinking two foot, maybe three feet.

7 Q. Two or three feet?

8 A. Yes.

9 Q. Is there a window between the
10 executioner's room and the execution chamber?

11 A. There is.

12 Q. What type of window?

13 A. One way, where I can see out and nobody
14 can see in.

15 Q. So you can see out? If you're standing
16 in the executioner's room you can see the execution
17 chamber, but whoever's in the execution chamber cannot
18 see you; is that correct?

19 A. That is correct.

20 Q. And are there ports in the window?

21 A. No. There's a port in the wall that the
22 IV lines run through.

23 Q. Is it just one port?

24 A. Well, it's a -- it's probably an 8-inch
25 by 8-inch door that opens up. You can open and close

1 it. And in that port there's two what I would call
2 half-moons that the lines run through.

3 Q. Okay. I -- I caught most of that. I
4 didn't catch the beginning, when you said -- the
5 beginning, you said there's one port. Can you tell
6 me --

7 A. It's one door. It's an 8-by-8, probably
8 a 10-by-8 door. It's a metal door that can be opened
9 and closed.

10 In that door there's two what we call
11 half-moon cutouts for the lines to run through.

12 Q. Okay. I see. And about how big is that
13 metal door?

14 A. About 8-by-8.

15 Q. Inches? I'm sorry, 8-by-8 inches?

16 A. That's my guess, yes.

17 Q. And roughly how big are the two
18 half-moons that you described?

19 A. Four, four or five.

20 Q. Four or five inches?

21 A. No, that's out of my quarter.

22 Q. I'm sorry, can you repeat that?

23 A. A quarter.

24 Q. Oh, a quarter? Okay.

25 And are the ports -- are those half-moons

1 inside labeled?

2 A. No. There's one on the left and one on
3 the right.

4 Q. Okay. But there's no labels that say
5 "left" or right?"

6 A. No.

7 Q. Okay. And then looking at the diagram
8 again, is there a window between the official witness
9 room and the execution chamber?

10 A. No.

11 Q. Are you able to hear what is going on in
12 the execution chamber while you're in the executioner's
13 room?

14 A. Yes.

15 Q. During an execution, who is in the
16 executioner's room while the drugs are being
17 administered?

18 MR. MITCHELL: Partial objection,
19 pursuant to the protective order.

20 Executioner, you can answer without using
21 names, if that makes sense.

22 THE WITNESS: The recorder and the
23 observer and me.

24 BY MS. LEONARD:

25 Q. Okay. So the same three people --

1 A. Yes.

2 Q. -- that you mentioned to me earlier?

3 A. Yes.

4 Q. And during an execution, who is in the
5 execution chamber while the drugs are being
6 administered? Again, please don't tell me names but
7 the roles of the people being involved.

8 A. The warden and the deputy warden.

9 Q. So the only three people in the execution
10 chamber at the time the drugs are being administered
11 are the warden, the -- did you say the deputy warden?

12 A. Yes.

13 Q. And the prisoner, the condemned inmate?

14 A. Yes.

15 Q. Okay. Where is the warden located during
16 the execution?

17 A. At the --

18 MR. MITCHELL: Object to form. You can
19 answer.

20 THE WITNESS: At the right side of the
21 inmate towards the head/shoulder area.

22 BY MS. LEONARD:

23 Q. Okay. So looking at the diagram, the --
24 the prisoner's head is towards the right side. So
25 towards the victim's room, it looks like?

1 A. No.

2 Q. The other way around?

3 A. Yes. It's just like there's a pillow on
4 the gurney.

5 Q. I see. And the warden stands to the
6 right side of the prisoner's head?

7 A. Correct, right where the "G" for "gurney"
8 is.

9 Q. I see. Okay. Does the warden ever move
10 to a different location?

11 MR. MITCHELL: Object to form. You can
12 answer.

13 THE WITNESS: At what point?

14 BY MS. LEONARD:

15 Q. At any point. Is the warden always
16 standing where you just described, or does he move to a
17 different spot at any point during the execution?

18 MR. MITCHELL: Same objection.

19 THE WITNESS: When the inmate is brought
20 in, strapped down, he will -- he's not there.
21 He's away from the gurney when the strap-down is
22 occurring.

23 When the strap-down is completed, the
24 blinds are raised. The warden will step over to
25 the telephone. There's two telephones. He'll

1 step over to the phone, call and ask if there's a
2 stay or a pending news.

3 If none, he steps over to the -- the
4 gurney, near the -- near the inmate and asks if he
5 has any last statement. The inmate does or
6 doesn't.

7 The warden gives the signal to proceed
8 and stays in the area until the first three
9 syringes are administered.

10 BY MS. LEONARD:

11 Q. And then does the warden move somewhere
12 after the three syringes -- first three syringes are
13 administered?

14 A. After the first three syringes have been
15 administered, the executioner will signal the warden
16 that the first three have been administered. The
17 warden waits two minutes and does a check for
18 responsiveness.

19 Q. Okay. And so are you the person that
20 gives that signal to the warden?

21 A. I am.

22 Q. What is the signal?

23 A. There is a -- actually, what it is is an
24 ACE bandage shaped in a square shape that is placed in
25 the window, in the window port where the lines enter.

1 When he sees that white block, he knows the first three
2 have been administered.

3 Q. Okay. And I just want to ask a follow-up
4 question about the phone. Where is the phone located
5 in the execution chamber?

6 A. As I am looking at it, it would be the --
7 on the wall between the execution chamber and official
8 visitor, in that corner.

9 Q. Okay. And is that just an internal
10 telephone? That's -- that's not able to make outside
11 calls, right?

12 MR. MITCHELL: Object to the form. You
13 can answer.

14 THE WITNESS: I don't know. I think if
15 he has -- I know he calls the commissioner, who is
16 on the grounds, to see if there are any papers.

17 There's another phone there that's an
18 internal phone that's connected to the injection
19 room.

20 BY MS. LEONARD:

21 Q. Okay, great. That was going to be my
22 next question. So you are able to talk to the warden
23 using that phone during an execution?

24 A. Yes, only -- that would only be used in
25 an emergency.

1 Q. In an emergency, you said?

2 A. Yes.

3 Q. Okay. And you mentioned that you could
4 hear each other through the window; is that right?

5 A. No. There's a speaker system in the
6 whole area. When they activate the speaker system I
7 can hear, the official visitors can hear, the victim
8 witnesses can hear.

9 Q. Is that system activated at the beginning
10 of an execution?

11 A. When the blinds are raised.

12 Q. And is there any portion of this capital
13 punishment unit that cannot hear what's going on in
14 that speaker system?

15 MR. MITCHELL: Object to form. You can
16 answer.

17 THE WITNESS: I don't know. I've only
18 been in that area when it's been used.

19 BY MS. LEONARD:

20 Q. Okay. And when you say that you would
21 use the phone in an emergency, what type of emergency
22 are you talking about?

23 MR. MITCHELL: Object to the form. You
24 can answer.

25 THE WITNESS: There would be reason to

1 lower the blinds if there's a problem with either
2 one of the IV lines.

3 BY MS. LEONARD:

4 Q. What type of problems with an IV line
5 would constitute an emergency?

6 A. Well, if there's --

7 MR. MITCHELL: Objection.

8 THE WITNESS: I'm sorry?

9 BY MS. LEONARD:

10 Q. You can answer.

11 A. If there's a problem with a blown vein.
12 A blown vein is where the needle has went all the way
13 through the vein or just nicked the vein and the
14 catheter is not working as it should.

15 Or both of them -- if it ever happened
16 where both of them was a problem, then they would lower
17 the blinds and have somebody go out and start another
18 IV.

19 Q. Okay. Have you ever used the emergency
20 phone during an execution?

21 A. Never.

22 Q. You mentioned earlier that the extraction
23 team -- that while the extraction team is in the
24 execution chamber the warden is not standing next to
25 the gurney. Where is the warden when the execution

1 team is in the chamber?

2 MR. MITCHELL: Object to form.

3 THE WITNESS: He's in the room, but he is
4 not right there helping them strap down.

5 BY MS. LEONARD:

6 Q. Okay. So the warden is in the execution
7 chamber at that time --

8 A. Yes.

9 Q. -- but not next to the gurney?

10 A. Right.

11 Q. And when does the warden first enter the
12 execution chamber?

13 A. When the inmate enters.

14 MR. MITCHELL: Object to form.

15 BY MS. LEONARD:

16 Q. So does -- the warden follows the
17 extraction team, or is the warden already in there?

18 MR. MITCHELL: Same objection.

19 THE WITNESS: He's either already in
20 there or leads them in.

21 BY MS. LEONARD:

22 Q. Or he leads them in? Okay.

23 And if he's already in there, how early
24 is he in there?

25 A. I don't know that. I just don't think it

1 matters, myself.

2 Q. I'm sorry, could you repeat that? I just
3 had a little --

4 A. I don't recall.

5 Q. You don't know?

6 A. No. I'm focused on what I'm doing.

7 Q. All right. And are you in the execution
8 room earlier than the warden is in the execution
9 chamber?

10 A. Yes.

11 Q. Okay. I'm going to turn to -- flip to
12 Page 13 of this document, so we may have to rotate our
13 pages back.

14 A. Okay.

15 Q. Do you see Page 13?

16 A. Yes.

17 Q. And then if you flip through or scroll
18 through pages 13 through 29, it looks like these pages
19 describe the primary role of each of these members of
20 the execution team. I'm wondering, why is the
21 executioner not listed on one of these pages?

22 MR. MITCHELL: Object to form. You can
23 answer.

24 THE WITNESS: I don't know.

25 BY MS. LEONARD:

1 Q. Have you ever noticed that your role is
2 not listed here?

3 A. I have.

4 Q. You have?

5 A. I have.

6 Q. And have you talked to anybody about
7 that?

8 A. No.

9 Q. What is your --

10 A. In reality, I'm part of the IV team.

11 Q. Oh, you're part of the IV team?

12 A. Yes.

13 Q. Okay. So you would say that the IV team
14 description on Page 20 is what applies to you?

15 A. That prepares the IV equipment. Yes, I
16 do that. Make sure it's in working order. I do that.

17 Q. How would you describe your primary role
18 as executioner?

19 MR. MITCHELL: Object to the form. You
20 can answer.

21 THE WITNESS: I do that. I prepare the
22 IV equipment, the lines. Set up everything for
23 the execution with the lines, with the syringes,
24 with the drugs. That's what I do.

25 BY MS. LEONARD:

1 Q. Okay. And where did your understanding
2 of your role come from?

3 MR. MITCHELL: Object to form. You can
4 answer, if you can answer without violating the
5 protective order.

6 THE WITNESS: I was appointed by the
7 warden.

8 BY MS. LEONARD:

9 Q. I'm sorry, did you say you were appointed
10 by the Court?

11 A. By the warden.

12 Q. The warden?

13 A. Yes.

14 Q. Okay. I'm sorry.

15 When were you appointed by the warden as
16 the executioner?

17 MR. MITCHELL: And I'm going to instruct
18 the witness not to answer. I'm going to object,
19 on the basis of the protective order, that
20 year-month information could be calculated to lead
21 to the identity of the executioner.

22 BY MS. LEONARD:

23 Q. Do you feel that -- do you feel that you
24 are the person primarily responsible for the execution?

25 MR. MITCHELL: Object to form. You can

1 answer.

2 THE WITNESS: No.

3 BY MS. LEONARD:

4 Q. Who is primarily responsible for the
5 execution?

6 MR. MITCHELL: Same objection.

7 THE WITNESS: You want my opinion?

8 BY MS. LEONARD:

9 Q. Yes, in your opinion.

10 A. It starts with the crime, the
11 investigators, the district attorney, the lawyers, the
12 jury, the judge, the appeal courts. I'm at the very
13 end. I'm just part of the process.

14 Q. Okay. And why is it that the term for
15 your role is "executioner?"

16 MR. MITCHELL: Object to form. You can
17 answer.

18 THE WITNESS: I never thought about it.

19 BY MS. LEONARD:

20 Q. Why do you consider yourself part of the
21 IV team?

22 A. That's because I prepare the IV
23 equipment. I make sure it's used -- the equipment is
24 in good working order.

25 Q. And do others consider you part of the IV

1 team?

2 MR. MITCHELL: Object to form. You can
3 answer.

4 THE WITNESS: Yes. I think they do. I
5 can't speak for them, but yes.

6 BY MS. LEONARD:

7 Q. Okay. I understand.

8 You mentioned that the warden appointed
9 you as the executioner. Why do you believe you were
10 selected?

11 MR. MITCHELL: Object -- object to form.
12 And also again, more materially, I'm going to
13 object on the basis of the protective order.

14 If I may suggest, you can ask a yes-no,
15 Ms. Leonard, if he thinks he can answer without
16 violating the protective order. Maybe you can do
17 it that way.

18 BY MS. LEONARD:

19 Q. Sure. Let me see.

20 Executioner, how about we turn to Page
21 31. Maybe we can try it this way. Will you just let
22 me know when you get to Page 31? No rush.

23 A. All right.

24 (Pause.)

25 THE WITNESS: I am there.

1 BY MS. LEONARD:

2 Q. Okay. Great. Thank you.

3 I'm looking. The top of the page says
4 "Execution Team Member Selection Criteria, Lethal
5 Injection."

6 And then underneath that heading there's
7 a list that says: "The warden selects the remaining
8 team and considers, at a minimum, the following general
9 criteria for other members," and then there's a list.

10 Do you see what I'm looking at?

11 A. Yes.

12 Q. The first item is "Length of service."
13 Is that one of the reasons you believe you were
14 selected?

15 MR. MITCHELL: Object to form.

16 THE WITNESS: You're asking me to speak
17 for the warden. But yes, I think it is.

18 BY MS. LEONARD:

19 Q. Right, in your opinion --

20 A. Yes.

21 Q. -- why the warden selected you?

22 A. Yes.

23 Q. And then "Ability to maintain
24 confidentiality." Is that another reason that you
25 believe the warden selected you?

1 A. Absolutely.

2 MR. MITCHELL: And I'm just going to --
3 if we're going down the list, that's fine. We'll
4 have a standing objection to each of these.

5 BY MS. LEONARD:

6 Q. Sure. I'll going to skip, actually, to
7 No. 4, "Willingness to participate." What is
8 "Willingness to participate?"

9 A. If somebody asks to be on the team, you
10 question why they want to be on it. But you don't want
11 somebody on the team that don't want to be on it.

12 If they don't want to be on it, that's
13 fine. If they participate in the execution and say, "I
14 don't want to do this no more," that's fine. Nothing
15 -- nothing ever becomes of it or is held against them.

16 Q. I understand. Did you ask to be on the
17 team?

18 A. No.

19 Q. No. 7 is "Staff recommendations to the
20 warden." Did anyone recommend you for this position?

21 MR. MITCHELL: Object to form.

22 THE WITNESS: I wouldn't know.

23 BY MS. LEONARD:

24 Q. Sorry. You can answer, Executioner.

25 A. I wouldn't know.

1 Q. Did you have an interview for this
2 position?

3 MR. MITCHELL: Object to form.

4 THE WITNESS: Unless it was the years I
5 had been around the warden every day was an
6 interview.

7 BY MS. LEONARD:

8 Q. Was there any formal interview
9 specifically for this -- this position?

10 A. No.

11 Q. Did you have to apply for the position?

12 A. No.

13 Q. So the warden approached you and asked
14 you if you wanted to be the executioner; is that right?

15 A. He didn't ask me if I wanted to, he asked
16 me if I would do it.

17 Q. And then at the bottom of the page,
18 there's a section that says "The following positions on
19 the execution team are specialized and have specific
20 requirements." Is your position considered
21 specialized?

22 MR. MITCHELL: Object to the form.

23 THE WITNESS: Yes.

24 BY MS. LEONARD:

25 Q. Why is your position considered

1 specialized?

2 MR. MITCHELL: Same objection.

3 THE WITNESS: Because I have received the
4 IV training and have put out the lines for the
5 delivery of the chemicals.

6 BY MS. LEONARD:

7 Q. Okay. And what other positions are
8 considered specialized?

9 A. IV. The ones that are listed.

10 Q. Sorry, I might have talked over you a bit
11 there. You said the ones --

12 A. The ones that are listed.

13 Q. The ones that are listed?

14 A. Yes. Three EMTs, and three staff that
15 has the training, facility management supervisor, and
16 the SST.

17 Q. And which one of those categories are you
18 part of?

19 A. The three corrections staff.

20 Q. So you're a corrections officer?

21 MR. MITCHELL: Object. Object, based on
22 the protective order. Do not answer, Executioner,
23 pursuant to protective order, Page ID 5116.

24 BY MS. LEONARD:

25 Q. Are the three correctional staff under

1 that specialized section you, the recorder, and
2 observer?

3 A. Yes.

4 Q. Have you received IV training through the
5 Tennessee Correction Academy by qualified medical
6 professionals?

7 A. Yes. Well, you go through the academy,
8 but it's through a -- the academy to a college.

9 Q. Through a college?

10 A. Through a college, yes.

11 Q. Was -- was it a medical college?

12 A. It had IV therapy training.

13 Q. IV therapy training?

14 A. Yes, ma'am.

15 Q. Okay. When -- when did you participate
16 in that training?

17 MR. MITCHELL: And I'm -- again, I'm
18 going to object pursuant to the protective order
19 and instruct the witness not to answer, based on
20 the year.

21 BY MS. LEONARD:

22 Q. Could you give me a rough estimate of how
23 long ago you participated in this training? Was it
24 within the last decade?

25 A. 20 years.

1 Q. I'm sorry, you said three years?

2 A. 20.

3 Q. 20 years?

4 I'm sorry. Executioner, you said it was
5 20 years ago?

6 A. 20 years, yes.

7 Q. Okay. Thanks for clarifying that.

8 And what type of medical professionals
9 conducted that training?

10 A. Professionals? It was the training for
11 medical professionals. I would assume some kind of
12 medical professionals to be LPNs and RNs, how to start
13 IVs and what to look for.

14 Q. Was anybody else present for that
15 training with you?

16 A. Yes.

17 Q. Who else was in the training with you?

18 MR. MITCHELL: And objection, pursuant to
19 the protective order. Do not answer, Executioner,
20 who else was present for the training.

21 MS. LEONARD: Well, can he at least
22 answer the roles of other people? I understand
23 obviously we can't use names or identifying
24 information.

25 BY MS. LEONARD:

1 Q. But Executioner, if you can say if anyone
2 by team position participated in the training, that
3 would be helpful.

4 A. At that time, there were three -- there
5 were two of the correctional staff as listed on
6 Page 31, No. 2.

7 BY MS. LEONARD:

8 Q. So in Item 2 is where it says "three
9 correctional officers?"

10 A. Yes, they were the other two.

11 Q. They were the other two? Okay. I
12 understand.

13 Were you given any written materials at
14 that training?

15 A. Yes.

16 Q. Did you take any notes at that training?

17 A. Yes.

18 Q. Do you still have those written
19 materials?

20 A. No.

21 Q. Do you still have your notes from the
22 training?

23 A. No.

24 Q. Do you remember how long the training
25 was?

1 A. As I recall -- I'm not 100-percent
2 positive.

3 Q. I'm sorry, I'm having a little bit of --
4 I'm having a little bit of trouble hearing you.

5 A. I'm not 100-percent positive. Off the
6 top of my head, I think it was 24 -- 24 hours, three
7 days.

8 Q. It was a three-day training session?

9 A. Yes, yes. As I recall, yes.

10 Q. Okay. And it took up the majority of
11 each day? Is that what you're saying?

12 A. They're all day every day, yeah.

13 Q. All day and overnight? Okay. I
14 understand. Okay.

15 MS. LEONARD: I think we've been going
16 for about an hour uninterrupted. I know we've had
17 sort of fits and starts this morning, but is this
18 a good time to maybe take a 10-minute break?

19 MR. MITCHELL: Yeah.

20 MS. LEONARD: Okay. Great.

21 THE VIDEOGRAPHER: Okay. We're going off
22 the record. The time is 10:50 a.m.

23 (Recess at 10:50 a.m. to 11:02 a.m.)

24 THE VIDEOGRAPHER: We're back on the
25 record at 11:02 a.m.

1 BY MS. LEONARD:

2 Q. Hi, Executioner. I just wanted to follow
3 up on one question from before the break.

4 You'd indicated that you went to a state
5 and that you went and saw a practice session at a
6 federal institution. I just wanted to clarify, was it
7 only one state?

8 A. No.

9 Q. You went to more than one state?

10 A. Yes. One state where I watched the
11 execution. The second state was for a federal prison
12 located -- and watched them prepare and practice for an
13 execution.

14 Q. Okay. So you saw an actual execution in
15 one state?

16 A. Yes, ma'am.

17 Q. But then you saw a practice session in a
18 different state?

19 A. Yes.

20 Q. Thank you. I just wanted to make sure my
21 understanding of that was correct.

22 And during the break, did you talk with
23 your counsel at all?

24 A. No.

25 Q. Okay. In those states, did they use a

1 lethal injection protocol?

2 A. Yes.

3 Q. Both states?

4 A. Yes.

5 Q. Was it a three-drug lethal injection
6 protocol?

7 A. One was. I'm not sure about the federal.

8 Q. Okay. And I -- you had indicated earlier
9 that you used the same protocol or the same procedures
10 as the one state. Is that -- is that the -- I guess
11 I'm trying to ask: Is that the same -- the state that
12 has the three-drug protocol, that's the one that you
13 use the same protocol?

14 A. We use the same six lethal injections in
15 Tennessee. I think, If I recall correctly, the first
16 stream was sodium pentothal, then vecuronium bromide
17 and potassium chloride. And I think that's what they
18 used the first time it was done, basically.

19 Q. Okay. I think I caught most of that.
20 The audio is still a little bit garbled. But you said
21 -- you said the first drug was sodium pentothal?

22 A. Yes.

23 Q. Okay. And then in the other state you
24 said you're not sure if they used a three-drug
25 protocol?

1 A. I'm not sure what the federals used.

2 Q. Okay. But what about the other state?

3 A. That they used the same drugs we were
4 using: The sodium pentothal, then vecuronium bromide
5 and potassium chloride.

6 Q. Okay. So both of those states used that,
7 you think?

8 A. Yes. Yes, ma'am.

9 Q. Okay. Thanks.

10 We're going back to Exhibit 1, the
11 protocol, sort of pick up where we left off at Page 32,
12 where it says "Training of Execution Team Members" at
13 the top. Do you see what page I'm on?

14 A. Page 32?

15 Q. Yes.

16 A. Yes.

17 Q. Okay. Great. It says there at the top:

18 "All execution team members must read the Lethal
19 Injection Execution Manual when they become members of
20 the execution team."

21 Do team members receive any other reading
22 materials?

23 MR. MITCHELL: Object to form.

24 THE WITNESS: Not that I know of.

25 BY MS. LEONARD:

1 Q. When did you first read the lethal
2 injection manual?

3 A. When it first came out in 2000.

4 Q. Okay. And have you read every revision
5 since then?

6 A. Yes.

7 Q. And then in the next session, it says:
8 "Additionally, the warden or designee holds a class
9 during which the manual is reviewed and clearly
10 understood by all participants."

11 What is the class referenced in that
12 sentence?

13 A. We go over the manual, the protocol.

14 Q. Who is "we?"

15 A. Everybody on the execution team.

16 Q. So when you say everyone on the execution
17 team, is that the people that are identified at the top
18 of the page there: the warden, the associate warden of
19 security, executioner, IV team, extraction team, death
20 watch team, lethal injection recorder, facility
21 maintenance supervisor, ITS security systems
22 technician, and escort officers?

23 A. Yes. As I understand it, yes.

24 Q. Everyone on that list participates in the
25 class?

1 A. Or should, yes.

2 Q. Is anyone else in the class, aside from
3 those people?

4 A. Not that I know of.

5 Q. Does the class take place in person?

6 A. It did, yes. I don't know if it did last
7 year because of COVID, that I recall.

8 But normally during -- we practice
9 monthly, and there will be one month set aside to just
10 do the protocol review.

11 Q. When you say one month is set aside, do
12 you mean one month in a year?

13 A. Yes.

14 Q. Okay. So in that last sentence, it says:
15 "At least annually, the warden or designee holds an
16 execution manual review class for all members of the
17 execution team."

18 Is that the class you are referring to?

19 A. Yes, that's what I was saying.

20 Q. Okay. And I'm just trying to understand.

21 A. Right.

22 Q. So that's separate than the class
23 referenced in the previous sentence?

24 A. No.

25 Q. They're the same thing?

1 A. Yes.

2 Q. So "The warden or designee holds the
3 class during which the manual is reviewed" is the same
4 thing as the annual class; is that right?

5 A. That's my understanding, yes.

6 Q. Okay. And how long does that class last?

7 A. However how long it takes to go through
8 both manuals, both protocols.

9 Q. What do you mean by "both protocols?"

10 A. Well, you have the lethal injection and
11 you have electrocution.

12 Q. And in the class, you review both of
13 those?

14 A. Yes.

15 Q. And about how long does that take? It
16 could just be an estimate.

17 A. I don't know; probably two hours, three
18 hours.

19 Q. Okay. How are -- is there any sort of
20 evaluation that follows the class?

21 A. Not that I know of.

22 Q. There's no quiz or test or assessment?

23 A. No.

24 Q. When it says that the warden or designee
25 holds the class, who is the warden's designee?

1 MR. MITCHELL: Objection.

2 THE WITNESS: Designee? I don't know.

3 It could be -- it could be the associate warden.

4 But that's his call. I don't know.

5 BY MS. LEONARD:

6 Q. But has it ever been someone other than
7 the warden that leads this class?

8 A. Not that I recall.

9 Q. So for every class you recall attending,
10 it was always taught by the warden?

11 A. Yes.

12 Q. Okay. How is the warden qualified to
13 teach this class?

14 MR. MITCHELL: Object to form. You can
15 answer.

16 BY MS. LEONARD:

17 Q. Yeah, I can ask it in a different way.
18 Why is the warden the person who teaches
19 this class?

20 MR. MITCHELL: Same objection.

21 THE WITNESS: Because he's the person
22 responsible to see that the execution is carried
23 out, that I recall at this time.

24 BY MS. LEONARD:

25 Q. Okay. And does the warden have any

1 special knowledge of the execution manual?

2 MR. MITCHELL: Same objection.

3 THE WITNESS: No, not that I know of.

4 That would be a question for the warden. I don't
5 know what else he would have or get.

6 BY MS. LEONARD:

7 Q. And what does the warden tell you about
8 the manual?

9 MR. MITCHELL: Objection.

10 BY MS. LEONARD:

11 Q. You can answer.

12 MR. MITCHELL: You can answer.

13 THE WITNESS: We just go over it from
14 beginning to end and go through and asks if
15 anybody have any questions about any of it.

16 BY MS. LEONARD:

17 Q. When you say "go through it from
18 beginning to end," do you mean that you read the entire
19 manual?

20 A. Yeah. They go through the manual and, as
21 they go through it, inquire from the people in
22 attendance have they got any questions or input or
23 suggestions about any of it.

24 Q. Okay. And so when you say "go through,"
25 do you mean that the warden reads it out loud?

1 A. Uh-huh, yes.

2 Q. Okay. And then you're allowed to sort of
3 just interject comments or questions --

4 A. Yes.

5 Q. -- throughout?

6 A. Yes.

7 Q. Have you interjected comments or
8 questions in these classes?

9 A. I do not recall.

10 Q. Do you recall whether anyone else has
11 asked questions?

12 A. I don't know. Probably, but I don't
13 know. Nothing sticks out that I recall.

14 Q. Okay. So when -- it takes two or three
15 hours to get through this class. That's two or three
16 hours to read through the lethal injection manual with
17 the opportunity to ask questions; is that right?

18 A. Yes.

19 Q. Okay. And does this review class happen
20 at the same time every year, roughly?

21 A. I don't think so.

22 Q. You don't think so? So it could be at
23 any time during the year?

24 A. Yes.

25 Q. And is that up to the warden?

1 A. Yes.

2 Q. Okay. I'm looking now a little bit
3 further down the page, Item 2, "The execution team
4 simulates." It says:

5 "The execution team simulates Day 3
6 (Execution Day) of the death watch
7 procedures and the steps outlined in
8 Section 4 for at least one hour each
9 month."

10 Does that mean that the entire simulation
11 of Day 3, from start to finish, takes one hour?

12 A. No, that we are practicing the lethal
13 injection until they come in and place them on the
14 gurney, move them into the room, move the visitors and
15 official witnesses and victim witnesses until starting
16 IVs, and the direct push of three cc syringes of saline
17 to which simulate lethal injection.

18 Q. Okay. And which portion of that takes
19 the one hour?

20 A. The whole thing.

21 Q. The whole thing only takes an hour?

22 A. I will say prior to the -- the execution
23 team goes through moving people, simulating the
24 execution, simulating waiting the two minutes before
25 the consciousness check, simulating injecting the next

1 set of syringes; that whole thing, kind of like that
2 part is as real as we can make it.

3 Q. Okay. And everything you just described
4 takes one hour?

5 A. Yes.

6 Q. And then in the next sentence, it says:
7 "Additional training is held within two weeks before
8 the scheduled execution."

9 I think you mentioned that earlier. What
10 is this additional training?

11 A. Just more, just doing it more.

12 Q. So it's the same process that you --

13 A. Yes.

14 Q. -- just described --

15 A. Yes.

16 Q. -- but you do it within two weeks of the
17 scheduled execution?

18 A. Yes.

19 Q. And does that also take one hour?

20 A. It takes as long as it needs to take,
21 really, I mean, because you have to address it, adjust
22 it. To me, that's a rough estimate. It could take a
23 little bit less time, it could take two hours.

24 Q. Okay. How would you -- how much time
25 would you say, on average, these trainings tend to

1 take?

2 A. An hour and a half.

3 Q. Okay. So roughly an hour and a half; but
4 it could be a little bit more, it could be a little bit
5 less?

6 A. It could be less, it could be more, yes.

7 Q. Okay. I understand.

8 What determines -- what determines when
9 that training is scheduled?

10 MR. MITCHELL: Object to the form.

11 THE WITNESS: The warden.

12 BY MS. LEONARD:

13 Q. And are all team members required to
14 participate in those trainings?

15 A. Yes.

16 MR. MITCHELL: Object to the form.

17 THE WITNESS: And that's unless someone
18 is on leave or sick or something.

19 BY MS. LEONARD:

20 Q. And if someone is on leave or otherwise
21 out, does someone substitute for them in the training?

22 MR. MITCHELL: Object to form.

23 THE WITNESS: The ideal plan is to have
24 more people all involved in the training than what
25 is actually required so if somebody is out, either

1 for practice or the real thing, that they can step
2 in and take their place.

3 BY MS. LEONARD:

4 Q. Okay. So there's -- so there's
5 additional staff members that participate in these
6 trainings? Is that what you're saying?

7 A. Yes.

8 Q. But at least everyone who will be in the
9 actual execution is in the training, as well?

10 A. I'm sorry, everybody what?

11 Q. Everybody who is in the actual execution
12 is in the training?

13 A. It should be, yes; again, unless they're
14 out on leave or sickness.

15 Q. Right. If someone is out on leave and
16 misses the training that happens within two weeks of
17 the scheduled execution, does that person still
18 participate in the actual execution?

19 MR. MITCHELL: Objection. You can
20 answer, Executioner.

21 THE WITNESS: I don't know. I don't
22 really understand the question. We have our group
23 that practices. You have your main group. Say
24 like the extraction team, if one of those is
25 out -- it can be any one of the five -- somebody

1 else is already trained to step in and take their
2 place.

3 BY MS. LEONARD:

4 Q. Okay. So if someone is out on leave and
5 misses training, a different person would substitute
6 for them in the actual execution?

7 A. Yes. Well, if need be, yes; because they
8 have been training and watching and know what to do,
9 yes.

10 Q. Okay. Has it ever happened that someone
11 is out on leave and missed a training but then they
12 still participate in the actual execution?

13 A. I don't know. I am focused on what I am
14 doing at the time.

15 Q. Have you ever missed one of those
16 additional trainings?

17 MR. MITCHELL: Objection.

18 THE WITNESS: One of the additional
19 trainings?

20 BY MS. LEONARD:

21 Q. Yes.

22 A. Not that I recall. That doesn't mean I
23 didn't, I just don't recall missing them.

24 Q. Okay. And then a little bit below that
25 it describes the simulation, which I think are

1 basically the same steps that you just described to me.

2 It says in Item A that "Volunteers play
3 the roles of the condemned inmate and physician." Who
4 are the volunteers?

5 MR. MITCHELL: Object, pursuant to the
6 protective order. And I'm going to instruct the
7 witness not to name any names as to who the
8 volunteers are.

9 THE WITNESS: I won't name any names, but
10 you want -- it's other members of the team.

11 BY MS. LEONARD:

12 Q. So other members of the execution team?

13 A. Yes.

14 Q. Okay. And if it's other members of the
15 execution team, then does someone else fulfill their
16 roles during the training?

17 A. That's what we just talked about.
18 There's people there, more than what you need. If you
19 have to fill in -- somebody's out, fill in for them,
20 just learn as much about each job as they can so that
21 they can fill in. If they don't need to fill in during
22 training, then they can be.

23 Q. Okay. I see what you're saying.

24 Then in Item B, it says "Saline solution
25 is substituted for the lethal chemicals." Is IV

1 insertion simulated?

2 A. No, we start IVs.

3 Q. What do you mean by you start IVs?

4 A. Both arms, there's IVs started in each
5 arm on the volunteer playing the condemned inmate.

6 Q. Okay. So you insert an IV into each arm
7 of the -- you actually insert the IV into each arm of
8 the volunteer?

9 A. I don't; the EMT does, yes.

10 Q. Okay. And has access been achieved in
11 the antecubital fossa area during each of the
12 simulations you've attended?

13 MR. MITCHELL: Objection.

14 THE WITNESS: Yes. But they also
15 practice in the back of the hand, different areas,
16 if they cannot find a vein in the antecubital
17 fossa.

18 BY MS. LEONARD:

19 Q. Do you practice finding those different
20 areas during every training?

21 MR. MITCHELL: Objection.

22 THE WITNESS: Not every training, no.

23 BY MS. LEONARD:

24 Q. When do you practice looking for those
25 different areas?

1 A. That's up to the EMTs as they practice.

2 Q. It's up to the EMTs?

3 A. Yes.

4 Q. Okay. And do you recall roughly --
5 again, it doesn't have to be a number; but do you
6 recall roughly how many times it's happened that they
7 weren't able to insert the IV into the antecubital
8 fossa area?

9 MR. MITCHELL: Objection.

10 THE WITNESS: During practice or the real
11 thing?

12 BY MS. LEONARD:

13 Q. During practice.

14 A. I don't know. There's been a few times.

15 Q. When you say "a few times," was that more
16 than five?

17 A. I don't recall. Could be five, could
18 be -- I don't know.

19 Q. Okay. During the practice, how do -- how
20 did you practice pushing the drugs?

21 MR. MITCHELL: Object to form.

22 THE WITNESS: How do I practice pushing?
23 Once the lines are set up, the IV is patent,
24 there's a good line, we go through the thing just
25 like it's a real thing.

1 The warden asks for the last statement,
2 gives me the signal. I push the No. 1 stream
3 that's a saline solution into the line and do a
4 push.

5 In the process in this training, when
6 EMTs search for a vein on an IV, you can't look at
7 it. You have to feel for it. So they use -- it
8 helps them when they practice, learn -- finding a
9 vein.

10 When you do a push, whether it's the
11 chemicals, drugs, there's a feel to it. Not every
12 vein is the same. Some are bigger, some are
13 smaller. You may use a larger catheter or a small
14 catheter. All that dictates how you push, and
15 there's a feel to it.

16 BY MS. LEONARD:

17 Q. And so is that feel different, depending
18 on who the volunteer is?

19 A. Everybody's different.

20 Q. Okay. I -- I understand what you're
21 saying.

22 So when you say that there's a feel, does
23 that feel apply to when you're pushing the saline through
24 the tubing?

25 MR. MITCHELL: Objection.

1 THE WITNESS: It applies any time you do
2 a push into anybody that has a catheter in. It
3 depends on the vein. Everybody's vein's
4 different.

5 BY MS. LEONARD:

6 Q. Right.

7 A. Different-sized catheter used is
8 different. That's how you know you have the catheter
9 in a vein is by the feel, more than by the look. If
10 you get a lot of resistance, you're not in a vein. If
11 you pull back on the plunger and don't get a flash of
12 blood back in the flash chamber, you're probably not in
13 a vein.

14 So all that is based on feel.

15 Q. And how do the IV team members know what
16 size catheter to use?

17 MR. MITCHELL: Objection.

18 THE WITNESS: That is the EMT. They feel
19 for the vein, they look for the vein. Depending
20 on the size of the vein, depending on the location
21 of the vein, determines what size catheter they
22 use.

23 Normally they like to use an 18 gauge,
24 which is a little bit bigger. But sometimes you
25 can't. You have to go to a smaller 22 gauge,

1 which would be used in the back of the hand or the
2 foot.

3 BY MS. LEONARD:

4 Q. Okay. Are you the person that pushes the
5 saline during simulation?

6 A. I am.

7 Q. How fast do you push the saline during
8 simulation?

9 MR. MITCHELL: Object to form.

10 THE WITNESS: Again, going back to what
11 we were just talking about, it's all based on
12 feel. Sometimes, in some people, you don't have
13 to push much pressure out.

14 So it's all about the feel. There's no
15 time limit, there's no -- well, if you do it in 30
16 seconds, that's good or that's bad. It's all
17 about the feel.

18 BY MS. LEONARD:

19 Q. Okay. And then do you push the chemicals
20 at the same rate during an actual execution?

21 MR. MITCHELL: Objection.

22 THE WITNESS: It's all about the feel.

23 BY MS. LEONARD:

24 Q. So it could be different? What you do
25 during the practice could be a different push rate than

1 what you do during the actual execution?

2 A. The push rate could be different from
3 syringe to syringe. It could be different -- it is
4 different from person to person.

5 Q. And does the fact that it's saline in the
6 practice matter, versus the actual chemicals? Does
7 that affect the push rate?

8 A. Not that I can tell. It's all about the
9 feel. Sometimes you can have someone laying there with
10 a catheter, and it's their -- I don't know if it has to
11 do with the blood pressure, the size of the vein, you
12 don't have to use much pressure at all. It's almost
13 like it pulls the plunger into the syringe. So
14 everybody is different. Everybody.

15 Q. Okay. So the push rate can change,
16 depending on all these different factors?

17 A. That's exactly right. Depending on the
18 size of the catheter, the location of the catheter, the
19 size of the vein. There's a lot of factors going into
20 that.

21 And the only way I can do it is by feel.
22 There's no good or bad; that's too fast, that's too
23 slow. It's all by feel.

24 Q. Okay.

25 A. That's one reason I think Tennessee may

1 be the only state that does that.

2 Q. That does what?

3 A. They practice like that.

4 Q. What do you mean by "like that?"

5 A. Using a person to play the condemned as
6 part of the IVs.

7 Q. What's your understanding what the --
8 what other states do?

9 A. I don't know. I just know what I seen
10 when I went to other states.

11 Q. And so what's an example -- without
12 telling me the state, what's an example of a different
13 way to do it?

14 A. Not use a person as the condemned, just
15 have the lines run and push the saline into an empty
16 bucket on the side.

17 Q. Okay. I see, using the empty bucket.

18 A. Yeah.

19 Q. But you're saying that in Tennessee the
20 way you do it is to use people that are pushing it into
21 the veins and the people are judging it by the feel?

22 A. Using that feel. That's -- to me,
23 that's -- that's important, the feel. That's the way
24 you know you have a good vein, no issues.

25 Q. Okay. I see. Is the physician ever

1 involved in the simulation at any point?

2 A. No.

3 Q. Do you know what a botched execution is?

4 MR. MITCHELL: Object to form.

5 THE WITNESS: I got an idea.

6 BY MS. LEONARD:

7 Q. Sorry, can you repeat that?

8 A. I got an idea.

9 Q. What's your idea of what a botched
10 execution is?

11 A. Something went wrong.

12 MR. MITCHELL: Same objection.

13 BY MS. LEONARD:

14 Q. You can answer.

15 A. Something went wrong.

16 Q. What type of thing would qualify as going
17 wrong?

18 MR. MITCHELL: Same objection.

19 THE WITNESS: Which type of execution?

20 BY MS. LEONARD:

21 Q. In a lethal injection.

22 A. The drugs not working properly. I don't
23 know. That's the first thing that comes to mind.

24 Q. Do you practice for that type of
25 situation during a simulations?

1 MR. MITCHELL: Same objection.

2 THE WITNESS: We practice that if the
3 inmate is not unconscious after the first three
4 drugs we start the protocol all over again.

5 BY MS. LEONARD:

6 Q. When you say "start all over again," at
7 what point did you start the protocol again?

8 MR. MITCHELL: Same objection.

9 THE WITNESS: When the warden will signal
10 that the inmate isn't unconscious, we start with
11 the backup set with No. 1, which is the midazolam,
12 all over again.

13 BY MS. LEONARD:

14 Q. Okay. What's the signal that the warden
15 gives to indicate that the prisoner is not unconscious?

16 MR. MITCHELL: Same objection.

17 THE WITNESS: The same signal he gives to
18 start the execution.

19 BY MS. LEONARD:

20 Q. And what is that?

21 A. We talked about that before, to make sure
22 we're on the same page. So far, it's been a certain
23 way he rubs his face.

24 Q. So a certain way he rubs his face?

25 A. Yes.

1 Q. And that's the same signal for both --

2 A. Yes.

3 Q. -- starting the execution and for letting
4 you know that the inmate is not unconscious; is that
5 right?

6 A. That's right; to start again, yes.

7 Q. Is there a different signal for signaling
8 that the prisoner is unconscious?

9 A. No.

10 Q. So how do you know if the prisoner is
11 unconscious?

12 MR. MITCHELL: Objection.

13 THE WITNESS: He's stepping back away
14 from the inmate and does nothing.

15 BY MS. LEONARD:

16 Q. Okay. So if you don't receive any
17 signal, then you move ahead with the execution?

18 MR. MITCHELL: Objection.

19 THE WITNESS: Correct.

20 BY MS. LEONARD:

21 Q. I see. Okay. And what does it mean to
22 be unconscious?

23 MR. MITCHELL: Object to form.

24 THE WITNESS: Not moving, not reacting,
25 almost like being asleep and you can't wake up.

1 BY MS. LEONARD:

2 Q. Have you ever heard the term "insensate?"

3 A. No, I have not.

4 Q. Okay. What does the warden do to assess
5 consciousness?

6 A. Shouts the name, says "Inmate." Does an
7 eyelash brush and pinches a nerve in the shoulder and
8 waits for a reaction.

9 Q. Are you able to see the warden doing the
10 consciousness check through the window?

11 A. Yes.

12 Q. Have you ever observed any response from
13 the prisoner when this happens?

14 A. None.

15 Q. All right. Back on Page 32, there's a
16 special section there for the executioner, for your
17 role. It says that "The executioner receives initial
18 and periodic instruction from a qualified medical
19 professional."

20 What does "initial" mean?

21 MR. MITCHELL: Object to form.

22 THE WITNESS: Where are you? I'm sorry,
23 where are you?

24 BY MS. LEONARD:

25 Q. At the bottom of Page 32, I'm sorry. The

1 very last sentence on that page.

2 A. That would be part of our annual update
3 training from the certified EMT instructor, to know
4 what to look for for a blown vein. They update
5 material having to do with IV therapy. Just an update.

6 Q. Okay. And how often does that take
7 place?

8 MR. MITCHELL: Object to form.

9 THE WITNESS: About once a year.

10 BY MS. LEONARD:

11 Q. Does it happen at the same time every
12 year?

13 A. No.

14 Q. Does the warden set that date?

15 A. Don't recall. I don't know if he does or
16 the EMT.

17 Q. Is the qualified medical professional
18 always the same person?

19 A. No. Well, when you say "always," how far
20 back are you going?

21 Q. That's a good question. How many
22 different people has it been throughout the years?
23 Again, it could be approximate.

24 MR. MITCHELL: Objection.

25 THE WITNESS: I'd have to say two, three,

1 maybe.

2 BY MS. LEONARD:

3 Q. Two or three people --

4 A. Yes.

5 Q. -- since what, around 2000?

6 A. Yes.

7 Q. Okay. And is that medical professional
8 employed by the TDOC?

9 MR. MITCHELL: Objection, pursuant to the
10 protective order. Do not answer, Executioner.

11 BY MS. LEONARD:

12 Q. Does that person get paid to provide this
13 instruction?

14 MR. MITCHELL: Object to form, but you
15 can answer if you know.

16 THE WITNESS: I don't know.

17 BY MS. LEONARD:

18 Q. Are you the only person that receives
19 this training that's on the bottom of Page 32?

20 A. No. The other two people that are with
21 me, the recorder and the observer.

22 Q. Okay. And when's the last time that you
23 received this instruction?

24 A. Within the past few -- I don't remember.
25 I want to say it was somewhere between November and

1 February, I would think, however far out that would be.

2 Q. Sometime between November of 2020 and
3 February of 2021?

4 A. I think so, yes.

5 Q. And the recorder and the observer
6 attended along with you?

7 A. Yes.

8 Q. And when's the next time that you'll
9 receive this instruction?

10 A. Before then, before -- I mean, whenever
11 the class is. I don't know.

12 Q. I'm sorry; at the beginning, did you say
13 before the end of the quarter?

14 A. No, before -- before November -- before
15 whenever we had it last year, we'll have it before that
16 date this year. I haven't looked. I don't know. We
17 haven't discussed it.

18 Q. I see. So likely before November 2021?

19 A. Yes.

20 Q. I see. Okay.

21 (Exhibit No. 49 marked.)

22 MS. LEONARD: I'm going to introduce a
23 new exhibit, Exhibit 49. Do you have that
24 available for you, Executioner?

25 (Exhibit No. 49 marked.)

1 THE WITNESS: 49?

2 BY MS. LEONARD:

3 Q. 49.

4 A. I got it.

5 Q. Okay. I'm looking at Page 3 of this
6 exhibit.

7 A. Okay.

8 Q. In the middle of the page there's a
9 section there with a little -- a lower case e. Do you
10 see that?

11 A. Yes.

12 Q. And I'm looking at the bold typeface
13 underneath that that starts with "IV 2-Executioner."
14 Is that you?

15 A. I don't know. Hold on.

16 Q. Sorry, I caught the "I don't know."

17 A. I'm looking at it now. I don't know.
18 This is the first time I've seen this.

19 Q. This is the first time you've seen this
20 document?

21 A. I think so.

22 Q. We'll read it together. It says:
23 "IV 2-Executioner has previously received
24 IV training by EMTs and participates in
25 monthly training/practice sessions during

1 which saline is injected through the IV
2 into the median cubital vein of
3 participant."

4 Is this the instruction that we were just
5 talking about --

6 A. Yes.

7 Q. -- on the bottom of Page 32?

8 A. Yes, about doing it there, during the
9 monthly training they would be participating in.

10 That's not the specialized training we
11 get from the certified trainer EMT we do once a year,
12 but they are there when we do our monthly training
13 class.

14 Q. By "they," do you mean the EMTs?

15 A. Yes.

16 Q. Okay. I see. What is the medial cubital
17 vein?

18 MR. MITCHELL: Object to form.

19 THE WITNESS: Now, what? Where do you
20 see it there?

21 BY MS. LEONARD:

22 Q. On the -- on the third line of the
23 boldfaced paragraph, it starts "injected through the IV
24 into the median cubital vein." What is that?

25 A. I'm still looking. I don't see it.

1 Q. I'm sorry, I'm looking at Exhibit 49.

2 A. I am, too. Under lower case e?

3 Q. Yes, lower case e; and then in the
4 boldface it says "IV 2-Executioner." And then two more
5 lines below that, the first word of the line is
6 "Injected."

7 A. Yes. It says, "injection of 320
8 milliliters of liquid?"

9 Q. I'm not sure we're looking at the same.
10 That's -- are you looking right at e itself?

11 A. Yes.

12 Q. Okay. If you look below that, do you see
13 the boldfaced type, the new paragraph after e?

14 A. I see it says "IV 2-Executioner."

15 Q. Yes, exactly, yeah. If you read that
16 sentence --

17 A. Okay.

18 Q. -- I'll read it with you.

19 "IV 2-Executioner has previously received
20 IV training by EMTs and participates in
21 monthly training/practice sessions during
22 which saline is injected through the IV
23 into the median cubital vein of
24 participant."

25 Do you see that?

1 A. Yes, I see it.

2 Q. What is the median cubital vein?

3 A. I don't know what the median cubital is.
4 I know what the -- no, I don't know what that is.

5 Q. You don't know what the median cubital --

6 A. Median cubital? No, I don't know that.

7 Q. You don't know that one?

8 A. No.

9 Q. Okay. And who is the participant? It
10 says "median cubital vein of participant."

11 MR. MITCHELL: Object, pursuant to the
12 protective order. Don't name any proper names.

13 THE WITNESS: That would be the
14 volunteer, I would assume.

15 BY MS. LEONARD:

16 Q. Okay. The volunteers that we just talked
17 about --

18 A. Yes.

19 Q. -- a couple minutes ago?

20 A. Yes, ma'am.

21 Q. Okay. Why do you do this training?

22 MR. MITCHELL: Object to form.

23 THE WITNESS: To set up the line so the
24 other people in the room can watch how
25 everything's done, to develop a feel of what it

1 feels like to do a push. To make sure the
2 strap-down team knows exactly where and when to
3 strap down. It's just to make sure they know what
4 they're doing.

5 BY MS. LEONARD:

6 Q. And when did you most recently
7 participate in this training?

8 A. Last Tuesday.

9 Q. For an execution?

10 A. Last Tuesday is when we trained.

11 Q. Last Tuesday, you said?

12 A. Yes.

13 Q. Okay. I got that.

14 MS. LEONARD: Thanks for putting up with
15 these audio issues.

16 (Exhibit No. 50 marked.)

17 BY MS. LEONARD:

18 Q. It says here also in the next paragraph,
19 it mentions the documentation of the training. I'm
20 going to pull up a new exhibit. This is Exhibit 50,
21 five-zero.

22 A. Wait a minute. Okay.

23 Q. Have you ever seen this document before?

24 A. No.

25 Q. Okay. We'll work together on this one,

1 too.

2 I'm looking about halfway down the page,
3 there's a break that says "IV Team."

4 A. Yes.

5 Q. And underneath that, "IV 2-Executioner."

6 A. Right.

7 Q. And then there's a long list of dates?

8 A. Right.

9 Q. Are these the dates that you attended
10 these trainings?

11 A. I don't know. I don't know where this
12 come from.

13 Q. Would it seem -- does that make sense?
14 Do any of these ring a bell to you?

15 MR. MITCHELL: Object to form.

16 THE WITNESS: Not really. I mean, when
17 we go to training, we have a training roster. I
18 don't know where this comes from. I don't know if
19 this was developed from a training roster or where
20 this comes from. I don't know how to answer that.

21 BY MS. LEONARD:

22 Q. Okay. I understand.

23 I'm going to turn back to Exhibit 1. So
24 we're back in the protocol again. And this time, we're
25 going to take a look at Page 34. The heading is

1 "Chemicals Used in Lethal Injection."

2 A. Give me just a second.

3 Q. Sure.

4 A. 34? I'm there. I'm good.

5 Q. Okay. So it says on that page that:

6 "The Department will use the following protocol for
7 carrying out executions by lethal injection." And then
8 it lists three drugs: midazolam, vecuronium bromide,
9 and potassium chloride. Do you see that?

10 A. Yes, ma'am.

11 Q. What is your understanding of the purpose
12 for using each of the three drugs?

13 MR. MITCHELL: Object to the form.

14 THE WITNESS: The midazolam would be a
15 sedative to make them unconscious. The vecuronium
16 bromide is a para- -- a paralytic, paralyzing
17 agent. And the potassium chloride stops the
18 heart.

19 BY MS. LEONARD:

20 Q. Okay. What type of drug is midazolam?

21 MR. MITCHELL: Object to form.

22 THE WITNESS: As far as I can tell, it's
23 a sedative. It puts -- puts them -- puts them to
24 sleep.

25 BY MS. LEONARD:

1 Q. Okay. What do you mean by being put to
2 sleep?

3 A. Knocked out. I'm not a doctor, I don't
4 know how to phrase it. But yeah, knocked out.

5 Q. I understand. Are you aware that
6 midazolam is highly acidic?

7 MR. MITCHELL: Object to form.

8 THE WITNESS: No.

9 BY MS. LEONARD:

10 Q. Sorry, what was that?

11 A. No.

12 Q. Do you know what the drug classification
13 for midazolam is?

14 A. No.

15 Q. Okay. Is there a difference between a
16 sedative and an anesthetic?

17 MR. MITCHELL: Objection.

18 THE WITNESS: I don't know.

19 BY MS. LEONARD:

20 Q. What type of drug is vecuronium bromide?

21 MR. MITCHELL: Objection.

22 THE WITNESS: My understanding is it's a
23 paralyzing drug.

24 BY MS. LEONARD:

25 Q. And why is that used?

1 MR. MITCHELL: Objection.

2 THE WITNESS: I don't know.

3 BY MS. LEONARD:

4 Q. You don't know why that's used in an
5 execution?

6 A. No.

7 Q. What type of drug is potassium chloride?

8 MR. MITCHELL: Objection.

9 THE WITNESS: I don't know.

10 BY MS. LEONARD:

11 Q. Do you know what potassium chloride is
12 used for outside of executions?

13 A. No.

14 Q. Do you know what midazolam is used for
15 outside of execution?

16 MR. MITCHELL: Objection.

17 THE WITNESS: No.

18 BY MS. LEONARD:

19 Q. Do you know what potassium chloride is
20 used for outside of executions?

21 MR. MITCHELL: Form.

22 THE WITNESS: No.

23 BY MS. LEONARD:

24 Q. How is the amount of each dose
25 determined?

1 MR. MITCHELL: Form.

2 THE WITNESS: By the pharmacist, I would
3 think.

4 BY MS. LEONARD:

5 Q. So the numbers that are on this page, you
6 think a pharmacist came up with those?

7 A. I don't know. I would think so.

8 Q. Okay. But were you involved in coming up
9 with those dosages?

10 A. No. I'm not a doctor; I'm not a
11 pharmacist, not a chemist.

12 Q. Was a doctor involved in coming up with
13 these?

14 MR. MITCHELL: Object to form.

15 THE WITNESS: I don't know.

16 BY MS. LEONARD:

17 Q. Are any of these drugs diluted before
18 they're administered?

19 MR. MITCHELL: Same objection.

20 THE WITNESS: Diluted?

21 BY MS. LEONARD:

22 Q. Yes, diluted.

23 A. The midazolam is mixed with -- it's 5 --
24 5 milliliters of midazolam. They're mixed with 45
25 milliliters of saline. They're mixed. I think so.

1 The vecuronium bromide is mixed with
2 bacteriostatic water.

3 The potassium chloride is simply drawn into
4 the syringe.

5 Those are done by instructions from the
6 pharmacist, and that is subject to change when the drugs
7 are received again.

8 Q. What do you mean by "received again?"

9 A. We don't have any now. And there's an
10 infusion schedule. The person that procures the drugs
11 would get those with any instructions as to what needed
12 to be mixed, how is it prepared, that -- that type of
13 thing.

14 Q. Okay. So you're -- you're saying that
15 there's a new set of instructions with each new
16 delivery?

17 A. No, I said there could be.

18 Q. There could be? Okay.

19 Do you know whether TDOC currently has
20 drugs to use for an execution?

21 A. I do not know.

22 Q. How often do the instructions change?

23 MR. MITCHELL: Objection.

24 THE WITNESS: I do not know.

25 BY MS. LEONARD:

1 Q. Have you experienced changing
2 instructions in the past?

3 MR. MITCHELL: Object to form.

4 THE WITNESS: We have went from the first
5 executions was -- we used to put in different
6 drugs, except for the potassium chloride.

7 BY MS. LEONARD:

8 Q. Okay. The instructions for those were --
9 were different?

10 A. Yes, because we used the potassium -- I
11 mean, we used potassium chloride. We used pancuronium
12 bromide and sodium pentothal. Some of those had to be
13 mixed, so the instructions changed just because the
14 drugs changed.

15 Q. Right, that makes sense. And you
16 mentioned that the midazolam is mixed with saline and
17 the vecuronium bromide is also mixed with something.
18 Did you say bacteriostatic water?

19 A. Yes.

20 Q. Is that the same as saline?

21 MR. MITCHELL: Objection.

22 BY MS. LEONARD:

23 Q. What's the difference between
24 bacteriostatic water and saline?

25 A. My understanding is that bacteriostatic

1 water is a sterile -- sterilized water.

2 Q. Does that come in a bag?

3 A. No.

4 Q. Does it come in a vial?

5 A. As I recall, it did.

6 Q. Okay. Does the saline come in a bag?

7 A. Yes.

8 Q. Do you discard the bags of saline after
9 each simulation?

10 A. Yes.

11 Q. Do you destroy the bags of saline after
12 each execution?

13 A. After each execution, let me say this.
14 Before the execution starts, all the trash cans are
15 emptied and replaced with a red bag. The storage
16 container for the syringes all are new.

17 Everything we use -- the wrappers, the
18 saline, the new syringes, the needles, the cotton
19 balls; anything we use in an execution goes in those
20 red trash bags and goes to the medical examiner's
21 office. Everything.

22 Q. Okay. And is that true for a simulation,
23 as well as for a traditional execution?

24 MR. MITCHELL: Object to form.

25 THE WITNESS: No, no.

1 BY MS. LEONARD:

2 Q. No? How is my -- sorry, what did I just
3 say that's wrong?

4 MR. MITCHELL: Same objection.

5 BY MS. LEONARD:

6 Q. You can answer.

7 A. No, there's no need to send it when we're
8 doing a practice. Real thing, we send everything.

9 Q. Okay, but -- so I see what you're saying.
10 So you're saying that after the rehearsal -- that after
11 the actual execution everything is discarded, but at a
12 rehearsal you don't need to discard anything?

13 A. That's exactly right. We want everything
14 to go to the medical examiner for review for any
15 question.

16 Q. But you can use, for example, the same
17 bag of saline for more than one simulation?

18 A. No.

19 Q. What do you do with the saline after the
20 rehearsal?

21 A. Throw it away.

22 Q. Okay. So you do throw away the saline.
23 Do you also throw away the bacteriostatic
24 water?

25 A. We don't use that during the simulation.

1 Q. Okay. Because you're only using the
2 saline?

3 A. That's exactly right.

4 Q. I see. So what equipment are you -- do
5 you not throw away after the simulation?

6 MR. MITCHELL: Object to form.

7 THE WITNESS: I'm lost. What equipment
8 do we not throw away? We throw away the syringes,
9 we throw away the needles. We throw away the IV
10 lines, the catheters; anything we use that could
11 be contaminated, can be contaminated. The gloves
12 we wear are all thrown away.

13 BY MS. LEONARD:

14 Q. Okay. I think I see -- I think I
15 understand. So it's all thrown away, but it's not sent
16 to the medical examiner's office. Is that right?

17 A. Exactly.

18 Q. I understand. I appreciate you bearing
19 with me on that.

20 On the same page, on Page 34, it says --
21 there's a paragraph that says: "Chemicals used in
22 lethal injection." Do you see that?

23 A. I see it.

24 Q. And it says they "will either be
25 FDA-approved commercially manufactured drugs; or, shall

1 be compounded preparations" -- "compounded preparations
2 prepared in compliance with pharmaceutical standards."

3 What is the difference between a
4 commercially manufactured drug or a compounded
5 preparation?

6 A. I do not know.

7 Q. Are the drugs that you use manufactured
8 or compounded?

9 MR. MITCHELL: Same objection.

10 THE WITNESS: I do not know.

11 BY MS. LEONARD:

12 Q. Do you check the expiration dates on the
13 drugs before you use them?

14 A. I do. I check them when we receive them,
15 when they're placed in storage, before we -- not just
16 the drugs, everything that has an expiration date.

17 Q. What else has an expiration date?

18 MR. MITCHELL: Same objection.

19 THE WITNESS: I can't recall off the top
20 of my head, but I know things like syringes -- I'm
21 sorry, needles have an expiration date. So we
22 check all -- anything we use very thoroughly to
23 make sure it's not out of date.

24 BY MS. LEONARD:

25 Q. Okay. Does the saline expire?

1 A. Yes.

2 Q. Does the bacteriostatic water expire?

3 A. I have no idea. We don't keep that on
4 hand. That comes when the drugs arrive.

5 Q. The bacteriostatic water is delivered
6 along with the supply of drugs?

7 A. Yes.

8 Q. Okay. I'm going to direct your attention
9 towards Exhibit 8. Do you have that one available?

10 A. 8? I'm sorry, 8?

11 Q. 8, yes.

12 A. Yes, I do.

13 Q. This is -- just to make sure we're
14 looking at the same thing, do you see it's an email?
15 There's a lot of blackouts for redaction; but do you
16 see it's an email dated Thursday, September 7th, 2017?

17 A. Yes.

18 Q. Have you ever seen this document before?

19 A. No.

20 Q. Do you want just a minute to sort of
21 scroll through it?

22 A. No. Give me a minute.

23 Q. Sure.

24 A. I'll scroll.

25 Q. Yeah. Just take your time. You can

1 scroll through the pages, and let me know when you've
2 gotten a chance to look at it.

3 (Pause.)

4 THE WITNESS: Okay.

5 BY MS. LEONARD:

6 Q. Okay. Thanks.

7 At the top of the document, the first
8 page, there's a list there of three chemicals. Do you
9 see where I'm looking at?

10 A. At the top of the first page?

11 Q. Right, where it says "Etomidate."

12 A. Yes, I see it.

13 Q. You see it?

14 A. First page. It says "Thursday, September
15 7, 2017."

16 Q. Right. And then underneath that, it
17 says --

18 A. Yeah, wherever those are. Yeah, I see
19 it.

20 Q. Okay. Great. So it says "Etomidate -
21 limited supply." Do you see that?

22 A. Yes.

23 Q. What is etomidate?

24 MR. MITCHELL: Objection.

25 THE WITNESS: I have no idea.

1 BY MS. LEONARD:

2 Q. What is ketamine?

3 MR. MITCHELL: Same objection.

4 THE WITNESS: I don't know.

5 BY MS. LEONARD:

6 Q. What is sodium thiopental?

7 MR. MITCHELL: Same objection.

8 THE WITNESS: That would be a drug we
9 used from 2000 to like 2006 as the first drug
10 given in a lethal injection, sodium thiopental.

11 BY MS. LEONARD:

12 Q. Okay. What type of drug is that?

13 MR. MITCHELL: Objection.

14 THE WITNESS: It's like midazolam, is my
15 understanding.

16 BY MS. LEONARD:

17 Q. I'm sorry, you said it's like midazolam?

18 A. That's my understanding, yes.

19 Q. Why is it listed as no longer available?

20 MR. MITCHELL: Same objection.

21 THE WITNESS: I have no idea.

22 BY MS. LEONARD:

23 Q. Are you aware that sodium thiopental is
24 not available?

25 MR. MITCHELL: Same objection.

1 THE WITNESS: I think it's available. I
2 don't know it's available for us to use for
3 execution. I don't know. I'm not sure.

4 BY MS. LEONARD:

5 Q. Okay. Do you know who wrote this email?

6 A. No. Never seen it before.

7 Q. I understand. Scrolling down to the
8 fourth page -- this is a five-page document, so the
9 fourth page would be the second to last.

10 A. Right. Hold on.

11 Q. I'll give you a minute to get down there.

12 A. Page 4?

13 Q. Yes, Page 4.

14 A. I'm with you.

15 Q. Okay. I'm looking where it says on the
16 bottom half of the page "This is an external email."

17 A. Okay.

18 Q. And then under that, it says "Hello" --
19 blank.

20 A. Yes.

21 Q. I want to give you a chance. Could you
22 just take a minute to read that paragraph?

23 A. Okay.

24 Q. And just let me know when you've looked
25 at it.

1 (Pause.)

2 THE WITNESS: Okay.

3 BY MS. LEONARD:

4 Q. Okay. I want to focus on the part of
5 that that starts with the sentence, "Here's my
6 concern," which is the fourth sentence, I believe.
7 It's on the third line.

8 A. Okay.

9 Q. It says:
10 "Here's my concern with midazolam. Being a
11 benzodiazepine, it does not elicit strong
12 analgesic effects. The subjects may be
13 able to feel pain from the administration
14 of the second and third drugs, potassium
15 chloride especially. It may not be a huge
16 issue but can open the door to some
17 scrutiny on your end. Consider the use of
18 an alternative like ketamine or use in
19 conjunction with an opioid."
20 Are you surprised by that information?

21 A. Okay.

22 Q. I'm asking you whether -- are you
23 surprised to hear that information?

24 MR. MITCHELL: Hey, Lynne, you froze on
25 mine. Can you repeat that?

1 MS. LEONARD: Yes. Sorry about that.

2 BY MS. LEONARD:

3 Q. Are you surprised by that information
4 about midazolam?

5 MR. MITCHELL: Object to form.

6 THE WITNESS: I don't know. I don't
7 know. I have no thought about it, one way or
8 another.

9 BY MS. LEONARD:

10 Q. Well, let me ask you this: Did you ever
11 hear that before, that midazolam does not elicit strong
12 analgesic effects?

13 MR. MITCHELL: Same objection.

14 BY MS. LEONARD:

15 Q. You can answer.

16 A. No, ma'am.

17 Q. This is the first time that you've ever
18 heard that?

19 A. Yes.

20 Q. Is this -- is this the first time that
21 you've ever heard that the prisoners may be able to
22 feel pain from the administration of the second and
23 third drugs?

24 A. I think that's been brought up before at
25 some point. It's not the first I heard of it; but I

1 don't have any control over it. I don't have any
2 power.

3 Q. So we had talked before about your
4 willingness to participate. Does this have any impact
5 on your willingness to participate?

6 A. No.

7 MR. MITCHELL: Object to form.

8 BY MS. LEONARD:

9 Q. Sorry, I don't think I caught your
10 answer, Executioner.

11 A. No, it does not.

12 Q. Why not?

13 MR. MITCHELL: Same objection.

14 THE WITNESS: Why would it?

15 BY MS. LEONARD:

16 Q. Does it matter to you, one way or the
17 other, whether the prisoners are able to feel the pain
18 from the second and third drugs?

19 A. I have witnessed --

20 MR. MITCHELL: Same objection.

21 THE WITNESS: I have witnessed six or
22 seven, one out of state, lethal injection
23 executions. I myself, personally, have not seen
24 anything at any time that led me to believe an
25 inmate felt pain.

1 BY MS. LEONARD:

2 Q. So you believe that they can never feel
3 anything?

4 A. From what I have seen, out of the ones I
5 have seen, I have not seen anything that would lead me
6 to believe that they felt pain.

7 Q. And if it's possible that they feel it,
8 but you wouldn't be able to see that, does your opinion
9 change?

10 MR. MITCHELL: Object to form.

11 THE WITNESS: Not really.

12 BY MS. LEONARD:

13 Q. I'm going to go back to Exhibit 1, the
14 protocol. We're going to start on Page 35 this time,
15 which says at the top page, "Compounded Preparations."

16 A. 35?

17 Q. 35.

18 A. Okay. One moment.

19 (Pause.)

20 BY MS. LEONARD:

21 Q. Are you on Page 35?

22 A. Almost, 34. Yes, ma'am; 35.

23 Q. Okay. Great. I'm looking about halfway
24 down the page, there's a heading underlined that says
25 "Storage of LIC." Do you see where I'm looking?

1 A. Yes, ma'am.

2 Q. Okay. It says in No. 1:

3 "When the LIC is received, a member of the
4 execution team and the warden take the LIC
5 to the armory building of" -- "armory of
6 Building 7 at RMSI."

7 A. Yes.

8 Q. Which member of the execution team is
9 that talking about?

10 MR. MITCHELL: Form. Objection, based on
11 the protective order. If you can answer based on
12 role, but not on a name.

13 THE WITNESS: I'm not sure. That implies
14 to me that I'm there. I always try to be there.

15 BY MS. LEONARD:

16 Q. You said you always try to be there?

17 A. Yes.

18 Q. Okay. But it's not necessarily always
19 you that does that?

20 MR. MITCHELL: Objection.

21 THE WITNESS: It could be somebody else.
22 I'm not sure who that is exactly directed at, but
23 I always try to be there whenever the drugs come
24 in because I like to see them for myself. I like
25 to see how they're packaged. I like to see the

1 dates on them. I want to see how they're kept,
2 whether they're frozen, whether they have to be
3 refrigerated, have to be mixed; and lay eyes on
4 the instructions to prepare myself for what I'm
5 going to have to do.

6 BY MS. LEONARD:

7 Q. Okay. Have you seen the storage
8 container of the LIC?

9 A. Yes. There's -- there's two of them,
10 yes.

11 Q. There's -- where are the two storage
12 containers located?

13 A. In the -- in the key-controlled section
14 next to the armory in the Riverbend Maximum Security
15 Prison.

16 Q. Okay. And have others on the execution
17 team seen the storage containers?

18 MR. MITCHELL: Objection.

19 THE WITNESS: I couldn't tell you. It
20 depends on -- yeah, I'm sure. When you say the
21 execution team, you're talking about the warden,
22 deputy warden, and other people. It may be even
23 people that work in that area. So I'm sure they
24 are, but I don't know -- I wouldn't know who.

25 BY MS. LEONARD:

1 Q. Okay. It looks like here there's a
2 couple details about the security of the container on
3 this page. Do you need a minute to review the details
4 of that that are in items 1 and 2 under "Storage of
5 LIC?"

6 A. I think I may have read it.

7 Q. Okay, yeah. I just want to ask you some
8 questions about some of it; but I don't want to take up
9 your time reading that all out loud, if that's --

10 A. Okay, that's fine. Go ahead.

11 Q. Okay. It says there that in one section
12 that "There is only one key to access the storage
13 container."

14 A. Correct.

15 Q. "That key is issued permanently to the
16 warden of RMSI. There are no other duplicates
17 produced. The warden surrenders the key to no one
18 other than the one member of the execution team
19 designated for inventorying the LIC and only for the
20 duration of the count and expiration checking of the
21 LIC. Only the warden or designee is allowed to access
22 the storage container."

23 I'm wondering, who is the one member of the
24 execution team to whom the key is surrendered?

25 A. That -- that would be the discretion of

1 the warden. I can't answer that.

2 Q. You don't know who gets that key to the
3 storage container?

4 A. To do an inspection, no.

5 Q. So it's not you?

6 A. I don't do the inspection. The only time
7 I have anything to do with that is when the drugs are
8 placed in there. And when the drugs are taken out for
9 an execution I'm there in that area to take the drugs,
10 account for them, check their dates, and bring them
11 back to the execution chamber. That's the only
12 involvement I have with it.

13 Q. Okay. So do you ever have the key to the
14 storage container?

15 A. No.

16 Q. And you don't know who else is allowed to
17 access the storage container?

18 A. No.

19 Q. But it's never been you?

20 A. No. Any time I'm in there the warden is
21 in there, because he's the only one that got the key.
22 So I don't know.

23 Q. Okay. I'm going to skip ahead a little
24 bit to Page 39; the same document, the protocol.

25 A. Okay. I'm there.

1 Q. Okay. I'm looking -- well, do you need a
2 minute to review this, or is this also information that
3 you're familiar with?

4 A. I guess it depends on what you're going
5 to ask. I think I'm familiar.

6 Q. Okay. Well, you can let me know -- you
7 can let me know if you need a minute to review it at
8 any point.

9 A. Okay.

10 Q. But I'll just start asking you the
11 questions that I have.

12 A. Okay.

13 Q. I'm wondering, it says in the first
14 sentence of Item 1, it says:

15 "Prior to execution, a minimum of two
16 members of the execution team bring the
17 LICs from the armory area directly to the
18 lethal injection room."

19 A. Yes.

20 Q. Is that the same as the lethal injection
21 executioner's room that we viewed in the diagram
22 earlier today?

23 A. Those drugs are only ever in the armory
24 in a storage box, or in my hands -- the executioner's
25 hands -- in the lethal injection room.

1 Q. That's -- you said that's the only two
2 places --

3 A. Yes, ma'am.

4 Q. -- that these drugs ever are?

5 A. Yes.

6 Q. And in that same sentence, it says "a
7 minimum of two members of the execution team." Who are
8 the two members, without giving me their names?

9 A. It could be the warden and myself. It
10 could be the warden and me and the recorder for the
11 execution.

12 Q. And so when you say "it could be," does
13 that mean that you switch off depending on the
14 execution? Or what -- what exactly do you mean by
15 "could be?"

16 A. Well, sometimes it may be just the
17 warden, me and the warden. Sometimes it may be me, the
18 warden, the other two members of the -- of my team, the
19 recorder and observer. It just depends on who's
20 present when we move those.

21 Q. Okay. I see. But are you and the warden
22 always there?

23 A. Always? Always where?

24 Q. Yeah. Are you -- are you always -- is it
25 always you and the warden, at minimum, who bring the

1 LICs from the armory area to the lethal injection room?

2 A. Yes, because I'm the one that's got to
3 have them and he's the only one that's got the key to
4 them, yes.

5 Q. Fair enough. What exactly -- when it
6 says "prior to an execution," what -- what does that
7 mean?

8 MR. MITCHELL: Object to the form.

9 THE WITNESS: When it says what?

10 BY MS. LEONARD:

11 Q. "Prior to an execution" at the beginning
12 of that sentence. When is that? When is "Prior to the
13 execution?"

14 A. Actually, the best I recall, we normally
15 -- executions are at 7:00 p.m. We start going to the
16 armory, getting the drugs, getting everything set up
17 about, as I recall, two hours prior. Thataway, we got
18 time to take our time and ensure everything's done. We
19 try to.

20 Q. Okay. And how do you know when to do
21 that? How do you know -- sorry, let me be clearer.

22 How do you know when to bring the LICs
23 from the armory area directly to the lethal injection
24 room?

25 MR. MITCHELL: Form.

1 THE WITNESS: Because I have a pretty
2 good idea how long it takes to set all that up.

3 That's another reason I like to look at
4 the drugs when they arrive to see the instructions
5 to tell me -- tell me to do more than what I've
6 normally been doing.

7 Like as now, just saying the potassium
8 chloride's got to be mixed now, so that's going to
9 entail more time. So I may need to start three
10 hours earlier instead of two hours earlier.

11 BY MS. LEONARD:

12 Q. And you can tell that by looking at the
13 drugs?

14 MR. MITCHELL: Form.

15 THE WITNESS: Well, if it's got to be
16 mixed it takes more time, yes.

17 BY MS. LEONARD:

18 Q. And what would -- and I'm just trying to
19 understand how the drugs work. What would you see that
20 would make you know that it would take more time?

21 MR. MITCHELL: Same objection.

22 THE WITNESS: I do each stream one at a
23 time. If they don't have to be mixed, you take
24 the needle, put it in the vial, and draw the --
25 draw it out.

1 If it's got to be mixed, that entails
2 taking a syringe with a needle and a mix, drawing
3 out the bacteriostatic water or saline, injecting
4 it through the vial, taking it up; taking another
5 vial, another syringe, drawing it out of the vial.
6 So there's more steps to the process.

7 BY MS. LEONARD:

8 Q. I see. So that, yeah, it sounds like
9 there's -- there's quite a few steps there. I see what
10 you're saying.

11 A. Yes.

12 Q. So I'm just going to back it up a bit.
13 Just bear with me as I'm trying to understand this.
14 When do you first see the lethal injection
15 chemicals?

16 A. When they arrive at the institute.

17 Q. Okay. And on the day of an execution,
18 when is the first time that you see the lethal
19 injection chemicals?

20 A. When I receive them to take to the
21 execution room.

22 Q. And that's around two hours prior to the
23 start time?

24 A. It's no later -- I'll say about two
25 hours.

1 Q. Okay. And what do the LICs look like at
2 that point?

3 MR. MITCHELL: Form.

4 THE WITNESS: Give me a minute. I've got
5 to recall.

6 The midazolam, I think there are two
7 small vials -- actually, four small vials. The
8 vecuronium bromide, I think there was 10.

9 I can't remember how many vials -- how
10 many vials of bacteriostatic water there were.
11 And you know what, I can't recall exactly. But
12 most times it's just a vial; a vial, either 5-cc,
13 10-cc, 30-cc vials.

14 BY MS. LEONARD:

15 Q. And are they all -- are all three drugs
16 in vials?

17 A. Well, all except for the -- I don't know
18 if you call them vials. There's 30 cc's in a vial,
19 yes. But they're all in vials except for, as I recall,
20 the bacteriostatic water is in a plastic vial, glycerin
21 glass, I think.

22 Q. I'm sorry, the bacteriostatic water is in
23 something different? Is that what you said?

24 A. I think it was in like a plastic vial.
25 It may not have been. I -- I can't recall.

1 Q. And are all three of the drugs liquid
2 when you see them?

3 MR. MITCHELL: Form.

4 THE WITNESS: I'm thinking. Give me a
5 minute.

6 As I recall, the vecuronium bromide I
7 think is in powder form with the bacteriostatic
8 water that had to be mixed. I think the rest of
9 them are in liquid form.

10 BY MS. LEONARD:

11 Q. Okay. So the midazolam and the potassium
12 chloride are liquid?

13 A. I think so, as I remember.

14 Q. All right. And I'm looking at the same
15 section again. So in Item 1 on the same page, 39, the
16 second sentence in Item 1 starts with "The amount of."
17 Do you see that?

18 A. Uh-huh.

19 Q. All right. So it says: "The amount of
20 chemicals and saline is sufficient to make two complete
21 sets of nine syringes each."

22 How much is the amount that is sufficient?

23 A. It depends on what the direction from the
24 pharmacist calls for.

25 Q. Are there written instructions for every

1 drug?

2 MR. MITCHELL: Form.

3 THE WITNESS: I think there was. As I
4 recall, I think there was.

5 BY MS. LEONARD:

6 Q. And are you the person who prepares the
7 syringes?

8 A. Yes.

9 Q. And you have written instructions for
10 each of the three?

11 MR. MITCHELL: Form.

12 THE WITNESS: How to prepare the drugs,
13 yes.

14 BY MS. LEONARD:

15 Q. Do you ever have any discussions with
16 anyone else on the team about preparing the drugs?

17 A. What do you mean, "discussions?" I don't
18 understand that question, really.

19 Q. I'm just wondering, do you -- so you're
20 the person that prepares the drugs. Do you ever
21 discuss the preparation of the drugs with anyone else
22 during the process or before the process?

23 A. The person with me that's the recorder
24 records each stream with the powder; the powder for the
25 proper amount -- say 50 cc's, 45 cc's -- to make sure

1 the amount is right.

2 After I prepare that, I hand it to him. He
3 verifies the amount and places a label on the syringe.
4 Like the first syringe would be "midazolam, 45 cc's." It
5 would be color coded Red, No. 1.

6 So, yeah; we discuss what's going on, yeah.

7 Q. Okay. That -- that makes sense to me.

8 Do you -- how do you know what those
9 amounts are? Is that included in the instructions?

10 A. Yes.

11 Q. And have you ever had any verbal
12 instructions from anyone?

13 A. No.

14 MR. MITCHELL: Form.

15 THE WITNESS: Not that I recall.

16 BY MS. LEONARD:

17 Q. Okay. I'm moving to Item 2 there on the
18 same page. It starts with "The LICs are drawn."

19 A. Uh-huh.

20 Q. "The LICs are drawn into syringes by one
21 member of the execution team." Is that you?

22 A. That's me.

23 Q. Okay. And "Then another member of the
24 execution team observes and verifies that the procedure
25 has been carried out correctly." Is that the recorder

1 that you were just talking about?

2 A. That's what I was just speaking of, yes.

3 Q. Okay. Great, makes sense.

4 Is it always you that draws the LICs into
5 syringes?

6 A. Always.

7 Q. Who decided that it should always be you?

8 A. The executioner? The warden.

9 Q. So the warden decided that you should
10 always do it as the executioner?

11 A. Well, if you are going to have an
12 execution, you should always be sure it's done right.
13 So, yes. I wouldn't want to be the executioner if it's
14 something that I hadn't prepared for myself.

15 Q. You're right. That makes sense.

16 When -- is the recorder always the same
17 person?

18 A. No. When you say "always," it has been
19 since the last two lethal injections that were done, it
20 was the recorder.

21 Q. Okay. And is that going to be the same
22 person next time?

23 MR. MITCHELL: Object to form.

24 THE WITNESS: I don't know.

25 BY MS. LEONARD:

1 Q. Looking in the same section a little
2 further down, there's a sentence about part way -- or
3 excuse me, sorry.

4 Actually, I'm going to go to No. 3. I
5 think you were just talking about the executioner, only
6 one syringe is prepared at a time?

7 A. That's correct.

8 Q. And then about halfway through that, it
9 says that:

10 "One member of the execution team will
11 perform this procedure, while another
12 member of the execution team observes and
13 verifies that the procedure has been
14 carried out correctly."

15 So is the one member of the execution team
16 that performs this procedure, that's you?

17 A. No. I prepare the syringe. A member of
18 the execution team observes. That's the recorder.

19 While the other member observes as I
20 prepare them, he observes and verifies. That's what we
21 were just talking about. I prepare the syringes. It
22 isn't him. He verifies the correct amount of cc's in
23 the syringe and labels the syringe and places them in
24 order in the trays.

25 Q. Okay. And how does he verify that it's

1 been done correctly?

2 A. Because he has a set of instructions,
3 just like I do.

4 Q. So he also has --

5 A. And -- and in two weeks prior to a
6 scheduled execution when we have the practices that we
7 talked about, this is one of the things we practice.

8 Q. Okay. So when -- you said he has the --
9 he's looking at the same thing that you did.

10 A. Yes.

11 Q. So he has the same written instructions
12 that you follow?

13 A. Yes.

14 Q. And they have --

15 A. We go over it once. When we do an
16 execution, we'll have the protocol in the room with us.
17 We will have the instructions, if there is any, of how
18 to draw the drugs.

19 Q. And when you say "if there is any," are
20 there drugs that you don't have the instructions for?

21 MR. MITCHELL: Form.

22 THE WITNESS: How far back are we going
23 to go?

24 BY MS. LEONARD:

25 Q. Was there ever a time that you did not

1 have written instructions for all three drugs?

2 A. Yes.

3 Q. And was that more than 10 years ago?

4 A. Yes.

5 Q. Was it more than five years ago?

6 A. No.

7 Q. Okay. But in the last five years, have
8 you had written instructions for all three drugs?

9 A. As I recall.

10 MR. MITCHELL: Form.

11 THE WITNESS: I know we have had written
12 instructions since midazolam. I'm not sure before
13 that.

14 BY MS. LEONARD:

15 Q. Have you ever talked with a pharmacist
16 about preparing the drugs?

17 A. No, not that I recall.

18 Q. Do you use the same size syringes for all
19 three drugs?

20 A. Same size, different amounts.

21 Q. Same size syringes but different amounts
22 of drugs? Is that what you're saying?

23 A. Yes.

24 Q. Okay. And what color is the content of
25 the prepared syringes?

1 MR. MITCHELL: Form.

2 THE WITNESS: Clear.

3 BY MS. LEONARD:

4 Q. Are they all the same color?

5 A. Clear. I mean, color -- the color of the
6 drug is not a large focus of mine, but I do think
7 they're all water colored, clear.

8 Q. Okay. And what do you do with the empty
9 vials after the syringes are prepared?

10 A. They go to the trash can. They go to the
11 medical examiner's office.

12 Q. Okay. Moving down to Item 4, it starts
13 with "Preparation in accordance." Do you see where I'm
14 looking?

15 A. Uh-huh.

16 Q. Okay. Do you need a -- this is sort of a
17 long section here. It extends onto the next page. It
18 has the headings for each piece of the process. Do you
19 need a second to review that, or --

20 A. No, I'm familiar with it.

21 Q. Okay. Are you the person that's
22 responsible for carrying out each of these steps?

23 MR. MITCHELL: Form.

24 THE WITNESS: You mean preparing the
25 drugs?

1 BY MS. LEONARD:

2 Q. Yes.

3 A. Yes.

4 Q. Is anyone else responsible for this?

5 A. No.

6 MR. MITCHELL: Same objection.

7 THE WITNESS: I do not know. If I were
8 to fall over dead, I'm assuming somebody would be.
9 Right at this point, I am the one that does that.

10 BY MS. LEONARD:

11 Q. Okay. Jumping down to vecuronium bromide
12 there, it's the last paragraph of Page 39.

13 A. Okay.

14 Q. It says: "The vecuronium is in powder
15 form and must be reconstituted with bacteriostatic
16 water." What does it mean to reconstitute?

17 THE WITNESS: Mix.

18 MR. MITCHELL: Form.

19 BY MS. LEONARD:

20 Q. "Reconstitute" means to mix?

21 A. Mix the water with the powder form.

22 Q. Okay. And does that turn it into a
23 liquid?

24 A. It's mixed with the liquid of the
25 bacteriostatic water, yes.

1 Q. Okay.

2 A. Once they're mixed -- once they're mixed,
3 it's clear. There's no particles in there. It's
4 clear.

5 Q. Okay. And are you the person that does
6 that?

7 A. Yes.

8 Q. How do you know how to do that?

9 MR. MITCHELL: Form.

10 THE WITNESS: You draw 10 -- 10
11 milligrams of bacteriostatic water, inject it into
12 the vial of vecuronium powder, shake it up until
13 it's clear, draw it back out into the syringe.

14 BY MS. LEONARD:

15 Q. And how did you learn how to do that?

16 A. I don't know. It may have been written
17 instructions, or it may have been common sense, or it
18 may have been both.

19 Q. Did you ever talk to the pharmacist about
20 how to prepare vecuronium bromide?

21 A. Not that I recall.

22 Q. Do you ever write down notes on these
23 instructions?

24 A. No.

25 Q. Does anyone supervise the preparation of

1 the drugs?

2 A. Me.

3 Q. So you're both the person that does it
4 and you supervise yourself doing it?

5 A. I'm the only one that -- I'm the one that
6 does it, so yeah.

7 Q. Okay. But no one else watches you do it?

8 A. The recorder.

9 MR. MITCHELL: Form.

10 BY MS. LEONARD:

11 Q. The recorder? Okay. We talked about
12 that already.

13 A. Yeah, right.

14 Q. And then you also -- you mentioned
15 earlier that the syringes, and all the way at the
16 bottom it says here: "All syringes and any of the
17 prepared but unused LIC are sent to the medical
18 examiner's office with the body."

19 Who does that?

20 A. We just -- we just collect the trash. We
21 put everything we used in a red bag and put it in the
22 medical examiner's van. It could be me, it could be
23 one of the other people in the room with me, just -- I
24 don't know that anybody is designated that job.

25 Q. Who else is in the room with you at that

1 point?

2 A. The recorder and the observer.

3 Q. So it could be any of the three of you
4 that disposes of the syringes?

5 A. Could be. It could be an EMT if they're
6 still there. So it could be anybody.

7 Q. Okay. And when did you send that, the --
8 send those materials?

9 A. When the body leaves. It goes in the van
10 with the body.

11 Q. Okay. Got it. Does anyone take photos
12 prior to the execution?

13 A. The people from the medical examiner's
14 office. They spend -- after the execution, they'll
15 spend at least 30 minutes examining the body, taking
16 pictures, all that.

17 Q. Is that before the execution?

18 A. No. After the execution, they'll spend
19 30 minutes examining the body and taking pictures and
20 doing all that.

21 Q. Okay. Are there any photos that are
22 taken before the execution?

23 A. Not that I know of.

24 Q. Are there any photos taken during the
25 execution?

1 A. No.

2 Q. And I'm sorry, who did you say was
3 responsible for taking those photos?

4 A. The medical -- the medical examiner's
5 office, when they're picking up the body.

6 MS. LEONARD: Okay. We've been going for
7 a while again now, a little over an hour. Is this
8 a place, would you want to stop for lunch, Rob?

9 MR. MITCHELL: Sounds great, yeah.

10 MS. LEONARD: Okay. Maybe we can come
11 back -- I don't know how much time you all want.
12 I know it's Friday, and we don't want to be here
13 forever and ever, I don't think. Is that okay to
14 come back at 2:00 Eastern/1:00 Central, or is that
15 too soon?

16 MR. MITCHELL: No, that works for our
17 team.

18 THE WITNESS: What time is that?

19 MR. MITCHELL: 1:00.

20 MS. LEONARD: Is that okay? Is that long
21 enough for you, Executioner?

22 THE WITNESS: That's fine.

23 MS. LEONARD: Okay. I don't want to rush
24 anybody; but I also, you know, don't want to keep
25 us here later than we all have to be here, either.

1 So --

2 THE WITNESS: Okay.

3 MS. LEONARD: Okay. Great. We can go
4 off the record, then, and come back around 2:00
5 for me, 1:00 for you.

6 THE VIDEOGRAPHER: Okay. We're off
7 record at 12:26 p.m.

8 (Recess at 12:26 p.m. to 1:05 p.m.)

9 THE VIDEOGRAPHER: We're back on the
10 record. The time is 1:05 p.m.

11 BY MS. LEONARD:

12 Q. All right. Executioner, on the break did
13 you speak with your counsel at all?

14 A. No.

15 Q. And did anyone else come into the room?

16 A. No. I went out and went to Subway, but I
17 didn't talk to anybody.

18 Q. Okay. You didn't talk to anyone? And
19 there's still no one in the room where you're taking
20 this?

21 A. No.

22 MS. LEONARD: And I'll just restate: If
23 anyone else does come in the room, please let us
24 know.

25 And the same thing. If the court

1 reporter could let us know if she's having any
2 trouble hearing at any point, please feel free to
3 interject so we can make sure that we're catching
4 everything. But so far I think so good, for the
5 most part.

6 BY MS. LEONARD:

7 Q. I'm going to pull up an exhibit we
8 haven't looked at today. This is Exhibit 2.

9 Executioner, if you could just let me
10 know, do you have that in front of you?

11 A. Yes.

12 Q. Okay. And have you seen this document
13 before?

14 A. Yes.

15 Q. What is this document?

16 A. It's the storage and preparation
17 instructions for midazolam.

18 Q. And where does this come from?

19 A. The pharmacist has it.

20 Q. Do you know for sure that it comes from
21 the pharmacist?

22 A. I don't know for sure, no. I didn't
23 receive it from him. I was told that's where it was
24 from.

25 Q. Who told you where it was from?

1 A. Probably the person that brings the
2 drugs.

3 Q. And who is that?

4 MR. MITCHELL: Objection. Restate.

5 BY MS. LEONARD:

6 Q. Yeah, don't tell -- don't tell me a name;
7 but when you say "the person that brings the drugs,"
8 what do you mean by that? What person is that? Not a
9 name.

10 MR. MITCHELL: And if -- if I can
11 interject real quick, Executioner. When -- or
12 Ms. Leonard, the Executioner may not know how to
13 refer to that, might not know the pharmacy in this
14 case, if that's what you're getting at. I'm not
15 sure if that's what you need, without saying a
16 name.

17 MS. LEONARD: Yeah, let me see if I can
18 -- maybe if I ask it in a different way, that
19 would help.

20 MS. LEONARD: Actually, could you -- do
21 you -- court reporter, could you just read back
22 the last question and answer.

23 (The record was read.)

24 BY MS. LEONARD:

25 Q. Let me try it this way. Is the person

1 who brings the drugs a person from the pharmacy?
2 Executioner?

3 A. I don't have anything to do with
4 obtaining the drugs. The person that obtains the
5 drugs, I think, is drugs from the pharmacy. And I only
6 get them from the person who obtains the drugs.

7 Q. Okay. So you receive the instructions
8 from the person who obtains the drugs?

9 A. Yes.

10 Q. And you aren't sure where the
11 instructions come from, but you think it's the
12 pharmacist?

13 A. That's my understanding, but I don't know
14 that.

15 Q. Okay. And have you ever talked with the
16 pharmacist about these instructions?

17 A. Not that I recall.

18 Q. Have you ever talked with the pharmacist
19 about any of the instructions for the drugs?

20 A. Not that I recall.

21 Q. Okay. When is the last time that you
22 reviewed these instructions for midazolam?

23 A. Yesterday.

24 Q. How frequently do you review them,
25 typically?

1 A. I don't until we get ready to give them,
2 because they may change.

3 Q. And how frequently would you say they
4 change?

5 A. I don't know.

6 Q. Are these the same instructions that you
7 get when the drugs arrive?

8 A. That's -- that's where they come from.
9 When they arrive, I get these.

10 Q. Okay. So when there -- when there's a
11 new delivery -- I'm just trying to make sure that I
12 understand this correctly.

13 So when there's a new delivery of drugs,
14 these are the instructions that would be included in
15 that delivery. Is that how it works?

16 A. I assume that's where it comes from, yes.
17 When a new batch, a delivery of drugs is received, we
18 would get instructions on how they should be prepared.

19 Q. Okay. And are there any additional sets
20 of instructions besides these?

21 A. Not that I know of.

22 Q. So these are the only instructions that
23 you've seen for midazolam?

24 A. As I recall them.

25 Q. Okay. Other than I understand that they

1 may change over time with the different deliveries.

2 A. Yes.

3 Q. But you don't have multiple sets of
4 instructions?

5 A. No.

6 Q. Okay.

7 A. I don't have any. These would be just
8 given to me when the drug -- when the drugs got
9 delivered so I could start planning and practicing.
10 And if I did have any questions, then I'd ask.

11 Q. Okay. And if you had questions, who
12 would you ask?

13 MR. MITCHELL: Objection.

14 THE WITNESS: The person who provided the
15 drugs.

16 BY MS. LEONARD:

17 Q. Okay. And would you expect that person
18 would know the answer, or does that person ask anyone
19 else?

20 A. I would assume that person would ask the
21 pharmacist.

22 Q. Okay. So ultimately, as far as you're
23 aware, the ultimate source of these instructions is the
24 pharmacist?

25 A. Yes.

1 Q. Okay. And do you have any authority to
2 deviate from these instructions?

3 MR. MITCHELL: Form.

4 THE WITNESS: When you say "deviate,"
5 from the preparing of the drugs?

6 BY MS. LEONARD:

7 Q. Yes.

8 A. I follow it to the letter.

9 Q. Sorry. What was that?

10 A. When it comes to preparing the drugs, I
11 follow it to the letter as best I can.

12 Q. And when you say as best you can, what do
13 you mean by that?

14 A. As I read them, as I understand them.

15 Q. Okay. Is there ever a time that you have
16 not followed these instructions?

17 A. Not that I know of.

18 Q. Does anyone else have the authority to
19 change these instructions?

20 A. Not that I know of.

21 Q. So once you receive these instructions,
22 you are obligated to follow what the instructions say?

23 A. That's what I understand.

24 Q. Okay. And if you -- what happens if you
25 run into a problem with these instructions?

1 MR. MITCHELL: Form.

2 THE WITNESS: I would contact the person
3 who received the drugs and ask them for direction
4 from the pharmacy.

5 BY MS. LEONARD:

6 Q. Okay. And is that what you would do if
7 it happened during an execution?

8 A. No, ma'am.

9 Q. What would you do if there was a problem
10 with preparing the drugs during the execution itself?

11 A. Well, what kind of problem?

12 Q. Um, let's say that there was a -- one of
13 the vials was missing.

14 MR. MITCHELL: Same objection.

15 BY MS. LEONARD:

16 Q. What would you do?

17 A. We would already know that before we
18 started the execution. We would know that when we got
19 the drugs out of the armory.

20 Q. What if one of the needles broke?

21 A. I got boxes of needles.

22 Q. Okay. So you would -- essentially, you
23 would just sort of proceed as best you could?

24 MR. MITCHELL: Objection, form.

25 THE WITNESS: If a needle breaks, I've

1 got a box of needles.

2 BY MS. LEONARD:

3 Q. Okay. And nothing's ever happened that
4 has required you to stop following these instructions?

5 A. No.

6 MR. MITCHELL: Form.

7 BY MS. LEONARD:

8 Q. Okay. I'm going to ask a couple of
9 questions about the instructions. Do you want time to
10 review them, or --

11 A. No, ma'am; I -- I think I'm good.

12 Q. Okay. I'm looking first at steps 6
13 through 8 on the first page.

14 A. Okay.

15 Q. There's a couple of references in these
16 steps to something called aseptic technique. You can
17 see it most clearly in Step 8, "Using aseptic
18 technique, connect the needles to the syringe tip."

19 A. Yes.

20 Q. What is aseptic technique?

21 A. We always wear gloves, we always use
22 alcoholic wipes and wipe surfaces and make sure the
23 nipple of the needle, the nipple of the trench, and the
24 end of the needle is clean. So I'll clean the needle.

25 Q. Okay. So you always use gloves when

1 you're working with the needle?

2 A. Yes.

3 Q. Is there anything else you do to conform
4 with aseptic technique?

5 MR. MITCHELL: Form.

6 THE WITNESS: Gloves.

7 BY MS. LEONARD:

8 Q. Just only wearing gloves?

9 A. Yes.

10 Q. Okay.

11 A. Now a face shield, we would wear a face
12 shield to prevent splatter, if there were to be any.

13 Q. Okay. So aseptic technique means wearing
14 gloves and a face shield?

15 A. Yes, and using alcohol wipes to make
16 everything as sterile as possible.

17 Q. Using what kind of wipes?

18 A. Alcohol wipes.

19 Q. Alcohol wipes?

20 A. To make sure everything is sterile, clean
21 as possible.

22 Q. Got it.

23 Then on Page 2, Step 13 instructs you to:

24 "Withdraw 5 milliliters from the first vial
25 of midazolam by drawing back slowly on the

1 syringe plunger until 5 milliliters is
2 obtained."

3 What do you do if you inadvertently draw
4 out too little midazolam?

5 MR. MITCHELL: Form.

6 THE WITNESS: Too little? When you draw
7 it out, the midazolam will be like in the vial.
8 And I don't remember if it was 10 milliliters, 20
9 milliliters. I think midazolam comes in 5
10 milliliters.

11 But in those vials there's always a
12 little bit more than 5 milliliters. You insert
13 the needle into the vial. You don't put it all
14 the way in the vial. You barely put it through
15 the top with the very end of the needle, and it
16 pulls the midazolam out of the vial and withdraw 5
17 milliliters.

18 BY MS. LEONARD:

19 Q. Okay. And what do you do if the vial of
20 midazolam you have is bigger than 5 milliliters?

21 MR. MITCHELL: Objection.

22 THE WITNESS: I go to the 5 milliliters.

23 BY MS. LEONARD:

24 Q. How do you know it's 5 milliliters?

25 A. The syringes are marked in 5 milliliters.

1 Q. And do you sometimes have drugs that are
2 different sizes?

3 A. Different drugs come in different sizes.

4 Q. Do you ever have different sizes for
5 midazolam?

6 MR. MITCHELL: Object to the form.

7 THE WITNESS: Not that I recall.

8 BY MS. LEONARD:

9 Q. I'm sorry, I didn't quite catch that
10 answer.

11 A. Not that I recall.

12 Q. Okay. On the same page, Step 16 says to
13 "Draw out enough normal saline to achieve a final
14 solution volume of 50 milliliters per cc." Do you see
15 that? It's the last sentence in Step 16.

16 A. Yes.

17 Q. How much is "enough normal saline" in
18 that sentence?

19 MR. MITCHELL: Form.

20 THE WITNESS: For midazolam? We're still
21 talking about midazolam?

22 BY MS. LEONARD:

23 Q. Yes.

24 A. I would take the first two needles, the
25 first two syringes; 45 milliliters of saline, 5

1 milliliters of midazolam make 50.

2 Q. Okay. And what do you do if you draw out
3 too much saline?

4 MR. MITCHELL: Form.

5 THE WITNESS: You mean like 46
6 milliliters?

7 BY MS. LEONARD:

8 Q. Right, that -- that would be an example.

9 A. Inject one milliliter back in the bag.

10 Q. Okay. And what if you draw up too
11 little?

12 MR. MITCHELL: Form.

13 THE WITNESS: Do it over.

14 BY MS. LEONARD:

15 Q. You would dip back into the same bag and
16 get more?

17 A. No. You don't remove the needle from the
18 bag until you've got exactly what you want.

19 Q. Okay. I see. So it wouldn't be really
20 possible to get too little, is what you're saying?

21 A. Well, I use a 1,000 milliliter bag; so
22 no, ma'am.

23 Q. Okay. And I want to go back up to the
24 top of Page 1 for a second of the same document. It
25 starts with "USP Chapter 797." Do you see where I'm

1 looking?

2 A. I'm getting there. Yes, I do.

3 Q. Okay. There's a couple of instructions
4 there. It says:

5 "USP Chapter 797 sets the following BUDs on
6 high-risk compounded preparations: 1, 24
7 hours at room temperature; 2, 3 days at
8 cold temperature, refrigerated; and 3, 45
9 days frozen."

10 What is a "BUD?"

11 A. Best used by.

12 Q. Best used by?

13 A. Best used by.

14 Q. And what does -- what does that mean
15 exactly?

16 A. That means expiration date.

17 Q. Okay. And are you --

18 A. And then the expiration date -- this is
19 the instructions -- it's good for 24 hours at room
20 temperature. After 24 hours it's not as good -- or not
21 good, one or the other.

22 Q. Are you still able to use it after it's
23 been out at room temperature for 24 hours?

24 MR. MITCHELL: Form.

25 THE WITNESS: I would not.

1 BY MS. LEONARD:

2 Q. You would not?

3 A. No.

4 Q. But would anyone -- could anyone
5 authorize you to use something that's been out for -- a
6 midazolam that's been out for 24 hours?

7 A. They may authorize it, but I'm not doing
8 it.

9 Q. Okay. That -- I understand that.
10 And it looks like, then, is there a
11 process by which the midazolam is moved from a freezer
12 to a refrigerator?

13 A. Yes.

14 Q. Could you tell me a little bit about that
15 process?

16 MR. MITCHELL: Form.

17 THE WITNESS: The warden or someone on
18 his staff -- that may be where the passive lead
19 comes in. But I'm fairly certain the warden
20 himself would go out there and move it from the
21 freezer to the refrigerator. And that would be
22 documented in a logbook held in the refrigerator,
23 under lock and seal, to verify movement.

24 BY MS. LEONARD:

25 Q. Okay. And how does -- how did they know

1 that they should move the midazolam from the freezer to
2 the fridge?

3 MR. MITCHELL: Form.

4 THE WITNESS: The inmate has a date set,
5 and the execution time is at 7:00 p.m.

6 BY MS. LEONARD:

7 Q. Are you the person that moves the
8 midazolam from the freezer to the fridge?

9 A. No, ma'am. I don't have a key.

10 Q. Right. And have you ever seen the person
11 who does that move the midazolam from the freezer to
12 the fridge?

13 A. I don't recall that, no. I've been
14 involved in many of these, but I do not really recall.
15 May have.

16 Q. Okay. I'm going to move to a new
17 document. This is Exhibit 4.

18 A. Okay.

19 Q. Have you seen this document?

20 A. Yes.

21 Q. And what is this?

22 A. This is for the preparation of the
23 potassium chloride.

24 Q. Okay. And the same thing for the
25 midazolam. Do these instructions come with the drugs?

1 A. Yes, I believe it does.

2 Q. And do these instructions ever change?

3 MR. MITCHELL: Form.

4 THE WITNESS: I don't recall what we did
5 before the last time we used this. So it may have
6 changed, but I don't know. And if a new batch
7 comes in, it may change. I don't know.

8 BY MS. LEONARD:

9 Q. Okay. It looks like there are 17 total
10 steps here. How long does it take you to complete all
11 17 steps?

12 MR. MITCHELL: Form.

13 THE WITNESS: To fill four syringes, I'm
14 going to say six minutes; seven, eight minutes.
15 Somewhere in there.

16 BY MS. LEONARD:

17 Q. Somewhere between six and eight minutes?

18 A. Yeah, probably.

19 Q. And that's to prepare all four of the
20 potassium chloride syringes; is that what you said?

21 A. Yes, I believe that is correct.

22 Q. And just quickly turning back to Exhibit
23 2, the midazolam instructions, it looks like there are
24 20 steps there. Approximately how long does it take
25 you to complete those steps?

1 A. It's the same as with the midazolam;
2 drawing the four syringes of saline probably takes four
3 minutes, three minutes.

4 They're placed in the tray. When the
5 warden gives the signal to start the passage, I take
6 the first tray, Red No. 1, and draw 5 milliliters out
7 of the vial of midazolam. And the recorder, he sits
8 and verifies we now have 50 milliliters. And I do that
9 on all four and proceed.

10 So the time it takes to do the midazolam
11 is two separate things.

12 Q. Okay. That -- that makes sense to me.
13 So the time it takes to do the midazolam, how long is
14 that?

15 A. That's what I just said. You have the
16 syringes first, which takes several minutes. Later,
17 when the warden gives the signal to start, I have got
18 to take those four syringes one at a time, put 5
19 milliliters in the first one.

20 And it's the recorder who verifies that
21 we now have 50, puts it in a tray.

22 I get the second one, Tray No. 2, put 5
23 milliliters of midazolam in that one. Hand it to the
24 recorder, he verifies it and puts it in Tray No. 2.

25 Then I do the same process with the third

1 set, No. 2.

2 So the time, we'll say four minutes to do
3 the saline and we'll say four -- let's say four, five
4 minutes to add the midazolam.

5 Q. Okay. And that's for all of those total
6 syringes of midazolam?

7 A. All syringes of the midazolam, Red No. 1
8 and 2, Blue No. 1 and 2.

9 Q. So about four minutes to prepare all
10 four?

11 A. I'll say again, you got your share of
12 time. You got three or four minutes to do the saline,
13 you got three or four minutes to add the midazolam,
14 so....

15 Q. So maybe more like six to eight minutes
16 total?

17 A. Total, both times, yes. Probably six,
18 eight minutes.

19 Q. Okay. And thanks for clarifying that.
20 That's -- that's helpful.

21 Do you -- and so are you the person that
22 prepares both the red set and the blue set?

23 A. I am.

24 Q. Does anyone else ever prepare one of the
25 sets?

1 A. No.

2 Q. In the past in the executions, has anyone
3 else ever prepared a different set, one of the sets?

4 A. When you say -- when you say "past," how
5 far back do we want to go?

6 Q. Ever in your career.

7 MR. MITCHELL: Form.

8 THE WITNESS: In the past, the executions
9 that was done, I don't really recall who done
10 those -- those -- those syringes.

11 BY MS. LEONARD:

12 Q. So at that point --

13 A. Other than that, it was me.

14 Q. Okay. So other than the first execution,
15 you have prepared the syringes for every execution?

16 A. Right.

17 Q. I'm going to take a look at a new
18 exhibit. This is 44.

19 A. Okay. I've got it.

20 Q. Okay. This is a -- it says "Chemical
21 Preparation Time Sheet" at the top. Is that what
22 you're looking at?

23 A. Yes.

24 Q. Okay. Have you seen this document
25 before?

1 A. I've seen this document -- I don't know
2 about this particular one; but yes, this document.

3 Q. Okay. What is this document?

4 A. That's when the syringes are prepared.
5 That's when the two midazolam syringes are prepared,
6 when the two vecuronium, the two potassium chloride,
7 and the three saline.

8 MR. MITCHELL: And real quick,
9 Ms. Leonard, my 44 from Monday is different.

10 MS. LEONARD: Oh, is it?

11 MR. MITCHELL: Yes.

12 MS. LEONARD: Let's see.

13 MR. MITCHELL: And I can screen share if
14 that's easiest, but it has a different date on it.
15 And let's see, it's has a different page number.
16 My 44 comes from the initial disclosures, and this
17 44 comes from the second supplemental response.

18 MS. LEONARD: Let me see. Oh, I see.
19 Yeah, I see what you're saying. In that case,
20 let's make -- yeah, I apologize. That's an error
21 on our end. Let's -- let's maybe mark this, then,
22 as this new exhibit rather than being 44. How
23 about we say that this is, I guess it would be
24 what, 65?

25 (Exhibit No. 65 marked.)

1 MR. MITCHELL: That sounds good. We'll
2 make the adjustment on our end.

3 MS. LEONARD: Okay. Great. Thanks for
4 that.

5 BY MS. LEONARD:

6 Q. Sorry about that, Executioner. That was
7 an error on our end in arranging these exhibits.

8 I'm hoping we can maybe walk through this
9 so I understand a little bit more about the timing. So
10 when it says here "2-Syringes prepared by" -- blank --
11 "at 12:45," is 12:45 the time that they are finished
12 being prepared?

13 A. This is a -- a practice sheet from the
14 packet. The date is April 14th, and we hadn't done
15 anything.

16 On this, I'm assuming -- because I don't
17 fill this out, the recorder fills it out. I'm assuming
18 that's the time he puts on there when those syringes
19 are -- when those syringes are filled.

20 Q. Okay. And so when it says here "100
21 milligrams of vecuronium bromide, 2-syringes prepared
22 by" -- blank -- "at 12:48," it looks like about three
23 minutes elapsed between 12:45 and 12:48.

24 Does that mean that it took three minutes
25 to prepare the two syringes of vecuronium bromide?

1 A. I would assume. Now, you got to
2 remember, this is important. This is the practice part
3 of it. These drugs are not mixed. All you're doing is
4 drawing saline into the syringe. We are not mixing the
5 drugs.

6 Q. Okay.

7 A. If the drugs were mixed, like the
8 vecuronium or the midazolam, it's going to take longer
9 than three minutes. This is a practice.

10 Q. Okay, I see. So do you ever practice
11 mixing the drugs?

12 A. No.

13 Q. Do -- you said that the recorder writes
14 down these times.

15 A. Right.

16 Q. Are you the person who's drawing up the
17 saline in the practice?

18 A. Yes.

19 Q. Okay. And then I'm going to pull up
20 another exhibit. This one is Exhibit 62.

21 A. Okay.

22 Q. It looks actually like this one might be
23 the same as --

24 MR. MITCHELL: 44.

25 MS. LEONARD: I'm sorry. Yeah, I'm

1 sorry, what number was that?

2 MR. MITCHELL: 44.

3 MS. LEONARD: Let's make this 44. I
4 apologize for the mix-up, for the sake of trying
5 to keep these as consistent as possible.

6 BY MS. LEONARD:

7 Q. Executioner, do you see this also says
8 "Chemical Preparation Time Sheet" at the top?

9 A. I do.

10 Q. And the date on it is 5/16/19?

11 A. I do.

12 Q. Do you know what this document is?

13 A. Yes.

14 Q. Have you seen this document before?

15 A. No -- I mean, yes, I sent it in the -- I
16 sent it yesterday. But normally I don't see documents
17 because I'm not the one that filled them out. The
18 recorder does.

19 Q. Okay. And what is this document?

20 A. It's the time the chemicals are prepared
21 for the red set of syringes.

22 Q. And is this from a rehearsal or an actual
23 execution?

24 A. It looks like -- it looks to be -- let me
25 see that date. It looks to be actual.

1 Q. And how can you tell?

2 A. By the date.

3 Q. By the date?

4 A. Yes.

5 Q. And who was executed on that date?

6 A. I don't know, but I know there was one
7 because it was my birthday.

8 Q. That's an unusual way to remember.

9 MR. MITCHELL: Can we strike that from
10 the record, pursuant to the protective order.

11 BY MS. LEONARD:

12 Q. So I'm -- looking at these times, it
13 looks like they're a little bit different. Not only
14 are they a little bit different for the time of day,
15 but it looks here that the two syringes of midazolam
16 were prepared at 1920. Is that what -- is that
17 correct?

18 A. Is that correct? That's what it says.

19 Q. Okay. And then it says that the two
20 syringes of vecuronium bromide were prepared at 1724?

21 A. Right.

22 Q. So that's about two hours apart, right?

23 A. Yes.

24 Q. Why were those prepared two hours apart?

25 A. Like I explained a while ago, we start

1 preparing these two hours, about, before the execution.

2 The midazolam syringes are drawn up with
3 45 milliliters of saline. The vecuronium is prepared.
4 The potassium chloride is prepared. The saline is
5 prepared.

6 1920 is I think 7:20. That would be when
7 the warden gave the command to start the execution.
8 There would be four syringes that would be prepared by
9 adding 5 milliliters of midazolam to them, completing
10 that process.

11 Q. Okay. So the -- the saline is added at
12 1920, at what you think is 7:20?

13 A. No, that's when the -- that's when the
14 midazolam is added.

15 Q. All right. So that's not -- the
16 midazolam is added at 1920? That's what that time
17 reflects?

18 A. Yes.

19 Q. Okay. And then the -- so the 1724, does
20 that reflect the time at which the vecuronium bromide
21 is prepared?

22 A. It -- it should.

23 Q. Okay. So the midazolam is the -- was the
24 last of the three drugs to be prepared?

25 A. Yes. The reason is, once it's mixed it's

1 just good for one hour. If we mix it at 1724 when
2 we're mixing the other stuff, it's beyond use then.

3 Q. Okay. So it's -- only once you prepare
4 the midazolam, it's only usable for one hour?

5 A. I think that is correct, if I remember
6 correctly. And if the execution isn't stayed, if we
7 prepare it at 5:30, even if we prepare it at 6:00, the
8 execution don't start until 7:15, 7:20. That's beyond
9 use then.

10 Q. I see. So if that were to happen, so you
11 would have to throw away that midazolam and not use it?

12 A. That's exactly right.

13 Q. Okay. I see what you're saying.

14 And is that -- so the vecuronium bromide
15 does not have a beyond use date that happened?

16 A. I don't think so, no.

17 Q. Do you know what the beyond use date of
18 vecuronium bromide is?

19 A. I do not.

20 Q. Is there a beyond use date for potassium
21 chloride?

22 A. I do not know.

23 Q. Okay.

24 A. According to the instructions, this is
25 what we do to satisfy the time limits on the drugs.

1 Q. Okay. And do you know what it means for
2 a chemical to fall out of solution?

3 A. I do not.

4 Q. Have you ever heard that term before?

5 A. Not that I know of.

6 Q. Not that you know of?

7 A. Not that I know of, no.

8 Q. You've never heard that term?

9 A. I don't think so.

10 Q. Okay. And just going back quickly to
11 Exhibit 4, which is the potassium chloride
12 instructions.

13 A. Okay.

14 Q. Have you ever deviated from these
15 instructions?

16 A. Not that I know of. I don't think so.

17 Q. Have you prepared the potassium chloride
18 for every execution since 2000?

19 A. I believe I have, yes.

20 Q. And is it -- does anyone else have the
21 authority to tell you to do something different than
22 these instructions?

23 A. They may have the authority, but I
24 wouldn't.

25 Q. Okay. I'm going to move back to Exhibit

1 1, the protocol.

2 A. Okay.

3 Q. It says at the top of the page here, "IV
4 Line Setup." Are we looking at the same thing?

5 A. What page?

6 Q. Page 41.

7 A. Hold on.

8 (Pause.)

9 THE WITNESS: Okay.

10 BY MS. LEONARD:

11 Q. Do you need to review this for a second?

12 A. I don't think so.

13 Q. Okay. Who is responsible for carrying
14 out the steps on this page?

15 A. Me.

16 Q. Is anyone else responsible?

17 A. No.

18 Q. Okay. It says in the first step: "Two
19 bags of .9 percent sodium chloride injection USP are
20 hung in the injection room. The expiration dates must
21 be checked."

22 Who checks the expiration dates of the
23 bags of sodium chloride injection USP?

24 A. I do. And the other two people in the
25 room are checking them also, as well as I do.

1 Q. What happens if the bags are expired?

2 A. I have one that's not.

3 Q. Where do you keep them?

4 A. They are kept on hand in the execution
5 room.

6 Q. How many of those do you keep on hand?

7 A. I don't have any idea. Those are
8 checked -- as a matter of fact, we check them monthly
9 because we use them during training.

10 Q. And that was going to be my next
11 question. Do you train for a scenario in which the bag
12 is expired?

13 A. We keep everything up to date, because
14 every month we look at them and see if we need to order
15 more. So there's always on hand. So when it's
16 expired, we get -- we get rid of it and there's others
17 there. We keep it in inventory.

18 Q. Okay. Is there ever a situation in which
19 you would use expired sodium chloride injection?

20 A. No.

21 MR. MITCHELL: Form.

22 BY MS. LEONARD:

23 Q. Have you ever done it in the past?

24 A. No.

25 Q. Okay. In Section 4, it says: "Once the

1 port is opened, an extension is inserted. Extensions
2 can be purchased in different lengths."

3 Do you see where I'm reading?

4 A. No.

5 Q. No? Item 4 on the same page, on Page 41.

6 A. Hello?

7 Q. Can you hear me?

8 A. I can't hear.

9 MR. MITCHELL: I think our office froze
10 for a second.

11 MS. LEONARD: Okay. Sorry about that.
12 Sorry, Executioner.

13 THE WITNESS: That's okay.

14 BY MS. LEONARD:

15 Q. I was looking at Step 4 on Page 41. It
16 starts with "Once the port is opened."

17 A. Okay.

18 Q. "Once the port is opened, an extension is
19 inserted. Extensions can be purchased in different
20 lengths. The extension into the first port should be
21 18 to 24 inches in length. Extensions are added to
22 each end of the solution set until it reaches the
23 desired length."

24 What does "desired length" mean?

25 A. So it gets to where it needs to go.

1 Q. And how do you know what lengths to
2 purchase?

3 MR. MITCHELL: Form.

4 THE WITNESS: The injection sets come
5 in -- that we use come in lengths of I think it's
6 118 inches, and the other is 153 inches. The
7 153-inch one is for the right side, which is the
8 farthest away. The 118-inch one is on the left
9 side, which is nearest.

10 And you can buy extensions to make it as
11 long as you need to be. There's different kinds
12 of solution sets and different lengths.

13 BY MS. LEONARD:

14 Q. Okay. Who is responsible for purchasing
15 those extension sets? Please don't give me a name.

16 A. The person at the facility usually knows
17 when they need to order those.

18 Q. So is it -- is it a member of the
19 execution team?

20 A. I don't know. I let the warden know.
21 Whoever he tells, whatever.

22 Q. I had a little trouble understanding sort
23 of the first half.

24 A. I let the warden know, and he will tell
25 me who to talk to or he would tell them himself.

1 Q. Okay. I see. And are the extensions
2 specific to each inmate?

3 A. I don't understand the question.

4 Q. Do you reuse the extensions in different
5 executions?

6 A. Reuse? We don't reuse anything. When
7 the execution is over with, those go in the red bags
8 that go to the coroner's office, the medical examiner's
9 office, with everything else.

10 Q. Okay. So then the tubing is bought
11 specifically for a scheduled execution; is that right?

12 A. No, we keep the tubing on hand. We use
13 that when we're practicing.

14 Q. Okay. So you practice with the tubing,
15 and then you use it in an execution but then it gets
16 thrown away?

17 A. We practice with the tubing, throw it
18 away. They're sealed. They're medically sealed.

19 Q. Oh, okay.

20 A. When you use it, you throw it away
21 whether it's practice or the real thing. You throw
22 them away and to the medical examiner's office.

23 Q. I see. Okay.

24 A. We do not reuse anything.

25 Q. Okay. And then in Step 6, it says: "The

1 line is taped to the port where the syringe is inserted
2 in place." What type of tape is used?

3 A. Medical.

4 Q. And who is responsible for obtaining that
5 medical tape?

6 A. The same person who gets all the other --
7 the lines, the solution sets, the needles, the
8 syringes. Whatever we need.

9 Q. Okay. And is all that equipment just
10 kept on hand?

11 A. Yes.

12 Q. And when it is discarded, someone
13 replaces that --

14 A. Yes.

15 Q. -- right away?

16 A. Not right away. We buy like 60 cc's --
17 60-cc syringes, it may come in a box of 36. You keep
18 three or four boxes on hand so you don't run out.

19 Q. Okay. I see. Has the tape ever fallen
20 off or come loose?

21 A. If it does, you just have to tape it
22 back. The reason for the tape there is to keep the
23 lines from being pinched, too, on the -- on the port
24 when you're placing the red or white square out the
25 port to notify the warden, whether it is the tech or

1 the -- the executioner, it is complete. That just
2 holds the lines in place so they don't automatically
3 get pinched off.

4 And yes, there's probably five, six
5 pieces of tape on the average.

6 Q. And do you ever train for a scenario in
7 which the tape comes off?

8 A. If it comes off, we keep going. The tape
9 doesn't do anything other than keep the line secure
10 while I'm opening the flows in the port.

11 And if it does come off, I will slide the
12 line over to the hole in the port, close the port, and
13 put another piece -- another piece of tape on it.

14 Q. Okay. Has that ever happened during an
15 execution?

16 A. No, because we use five or six pieces.

17 Q. I see. Okay. So then in Step 7, it
18 states:

19 "The sodium chloride bag and line on the
20 left goes to the left side of the condemned
21 inmate. The left side of the condemned
22 inmate is nearest the wall/window and
23 requires fewer extensions."

24 How do you know which line is to the left
25 arm once it has been fed through the port?

1 A. Well, the one on the left is on the left
2 side. The one on the right is on the right side. I
3 mean, they're not -- and the one on the right is a lot
4 longer than the one on the left. And we start doing
5 the IV on the right side.

6 Q. When you say "right" and "left," is right
7 and left as you're facing the ports from the lethal
8 injection room?

9 A. Yes, it is, because the bag on the left
10 goes to the left arm, it goes through the left port.
11 The bag on the right goes to the right arm through the
12 right port.

13 Q. Okay. So just to make sure I'm clear, if
14 someone is standing in the execution chamber --

15 A. Right.

16 Q. -- I think you mentioned earlier the
17 warden stands there.

18 A. Right.

19 Q. If he were looking at it, he would see
20 that the left -- what you see as the left is going
21 through what he would see as the right? Is that how it
22 works?

23 A. Yes.

24 Q. Okay. I'm going to move to Page 42. It
25 says at the top, "Insertion of a Catheter and

1 Connection of IV Lines."

2 A. One second. Page?

3 Q. 42. It's just the next page.

4 A. Oh, I'm sorry. I didn't know where I was
5 going. Okay. Go ahead.

6 Q. It says here at the beginning: "The
7 extraction team straps the inmate to the gurney in the
8 death watch area." Are you part of the extraction
9 team?

10 A. No.

11 Q. Have you ever been?

12 A. I'm part of the -- I'm part of the IV
13 team.

14 Q. Have you ever been part of the extraction
15 team?

16 A. Yes.

17 Q. When were you part of the extraction
18 team?

19 A. Up until around 2002, I think.

20 Q. Did you say 2002?

21 A. Yes. I think, 2001 or 2002.

22 Q. Okay.

23 A. More so on the extraction team with the
24 chair, not the lethal injection.

25 Q. With the electric chair?

1 A. Yes.

2 Q. Okay. Have you been part of the
3 extraction team with the lethal injection?

4 A. No.

5 Q. And when you did it for the electric
6 chair, were you serving as both the executioner and
7 part of the extraction team for the same execution?

8 A. Yes.

9 Q. Okay. So coming back into the present
10 time in the more recent executions, you are not part of
11 the extraction team; is that right?

12 A. Neither one, right.

13 Q. Okay. And what is your role while the
14 extraction team carries out the steps described here in
15 1 through 3?

16 A. I am in the injection room.

17 Q. Okay. What are you doing in there at
18 that time?

19 A. Waiting.

20 Q. Waiting, you said?

21 A. Yes.

22 Q. Okay. And it says here that "The member
23 of the IV team in the lethal injection room signals the
24 IV team to insert IV lines." Is that you?

25 A. Yes.

1 Q. And it looks like there's another member.
2 In Step 4, "One member of the IV team remains in the
3 lethal injection room." But it looks like someone else
4 enters the execution chamber with an instrument cart.
5 Is that right?

6 A. There is a member, not in the room with
7 us, but another member with EMTs that takes the cart
8 out and starts the -- starts the IVs.

9 Q. So is that person part of the IV team?

10 A. I guess they would be considered part of
11 that, yes.

12 Q. Okay. But sorry, is that person an EMT,
13 did you say?

14 A. No.

15 Q. Okay. That's another -- so that person
16 is a member of the execution team?

17 A. I would call him that, yes.

18 Q. Okay. So when it says in No. 4: "The IV
19 team enters the execution chamber with an instrument
20 cart," that person is not an EMT but they are a member
21 of the IV team?

22 A. When -- when -- the EMTs are part of the
23 IV team. The person that goes out with the cart is the
24 IV team. And actually, the three people in the
25 injection room are with the IV team.

1 Once we three of us go into the injection
2 room, nobody else -- we don't let anybody else come in
3 there.

4 Q. Okay. And when you say "the three of
5 us," you mean the people we've been talking about? The
6 recorder --

7 A. Yes. The recorder and the observer, yes.

8 Q. -- and you?

9 So is it -- is it one of you three that
10 takes the instrument equipment cart into the execution
11 chamber?

12 A. No.

13 Q. It's someone different?

14 A. Yes.

15 Q. Okay. I see. And so where are you when
16 the IV team is inserting the IV lines?

17 A. I am in the room, the injection room.

18 Q. Okay. And I think that you talked about
19 this before, but have you ever personally inserted the
20 IV lines during an execution?

21 A. No.

22 Q. All right. In Step 6, it says in the
23 second sentence: "The EMT inserts the first catheter
24 into a vein on the right side of the inmate in the
25 antecubital fossa area." Do you see that?

1 A. Yes.

2 Q. What is the antecubital fossa area?

3 MR. MITCHELL: Objection, form.

4 THE WITNESS: The inner part of the
5 elbow.

6 BY MS. LEONARD:

7 Q. I'm sorry, could you repeat that?

8 A. The inner part of the elbow, the joint in
9 your arm.

10 Q. Okay. Got it. And then it says: "If a
11 catheter can't be successfully inserted into the
12 antecubital area, the EMT examines other locations for
13 insertion in the following order."

14 Just before we talk about those, how many
15 times does the EMT try to insert the first catheter in
16 the antecubital area?

17 A. Well, it depends. If they find one and
18 they can't hit it, then they go over to another vein
19 and try a couple of veins in the antecubital fossa.

20 If not, then they start moving to other
21 sites mentioned: arm, wrist, back of hand, top of
22 foot, leg.

23 Q. Okay. How many times is the EMT allowed
24 to try the antecubital area before they need to move to
25 different locations?

1 MR. MITCHELL: Form.

2 THE WITNESS: That's up to them.

3 BY MS. LEONARD:

4 Q. That's up to the EMT?

5 A. Yes.

6 Q. Okay. Does anyone else participate in
7 that decision?

8 A. No. There's two -- at least two EMTs out
9 there, and they -- they take care of all of that.

10 Q. Okay. And do you have any say in that
11 decision?

12 A. No.

13 Q. Does the physician have any say in that
14 decision?

15 MR. MITCHELL: Form.

16 THE WITNESS: The physician is one guy
17 and one guy only, because he pronounces death.
18 That's the only time you'll ever see or hear from
19 a physician -- unless we have to do a cutdown,
20 which has never been done.

21 BY MS. LEONARD:

22 Q. You've never had to perform a cutdown in
23 an execution?

24 A. No.

25 MR. MITCHELL: Form.

1 BY MS. LEONARD:

2 Q. Okay. And is the warden involved in the
3 decision to search for a different vein?

4 A. No.

5 MR. MITCHELL: Form.

6 THE WITNESS: The warden's not had any
7 medical training, either.

8 BY MS. LEONARD:

9 Q. The warden is not responsible because he
10 does not have medical training?

11 A. That would be my -- I mean, I don't know
12 how the warden is going to correct the EMT that does
13 this every day on where they need to go next.

14 Q. So the EMTs are more qualified to decide
15 that?

16 A. That would be my -- my thinking; yes,
17 ma'am.

18 Q. Okay. And at the bottom of Page 42,
19 there's a heading that says "Venipuncture and IV
20 Lines," and then there's a set of steps there. It says
21 "The EMTs," a through f.

22 Do you see where I'm looking?

23 A. Yes.

24 Q. What are you doing while the EMTs perform
25 those steps?

1 A. Let me see. I'll look at some of the
2 actual....

3 You mean steps 1 -- no, steps a through f,
4 what am I doing?

5 Q. Right.

6 A. Watching.

7 Q. You're watching?

8 A. Yes.

9 Q. Okay. And are you able to watch what
10 they're doing through the window?

11 A. On the right side you can see, yes. But
12 we have a camera in the ceiling with a -- it's called a
13 pan and zoom tilt, where we can zoom it on the area
14 where they are working and I can watch. If they are on
15 the right side, I can pretty much look through the
16 window and see what's going on.

17 Q. Do you usually watch on the camera or do
18 you watch through the window?

19 A. Which side?

20 Q. Either one. I guess I'm just --

21 A. Right side, I do both. Left side I do
22 both, but look more through the window.

23 Q. Okay. I see. Have you ever noticed a
24 problem with the insertion of the catheters?

25 A. Define "problem." I don't know. I don't

1 know exactly where you're going with that. I don't
2 know.

3 Q. Maybe the type of thing that you
4 suggested earlier; that if the EMT cannot find a vein,
5 something like that.

6 A. If they can't find one there, they'll
7 move to another one, another area.

8 Q. Okay. Have you observed that before?

9 A. Yes.

10 Q. And when did that happen?

11 A. We've practiced once a month all these
12 years. I don't -- I don't -- I can't say when it
13 happened. I know over the -- over the years of doing
14 this there's been times where they had to look for
15 another location.

16 Q. Okay. And do you have any say in this
17 process?

18 A. None.

19 Q. So if you saw there being a problem,
20 would you be allowed to intervene?

21 A. The only time I would intervene is once a
22 catheter has been inserted in my line back to the drip
23 chamber, they would give me a signal to turn the line
24 on. I look for the drip chamber; there is a small,
25 steady stream of fluid or a drop every one or two

1 seconds to be sure the line is running.

2 If it's not working, that's when I let them
3 know that they need to find another -- find another vein.

4 Q. And when you say "them," do you mean
5 EMTs?

6 A. Yes.

7 Q. Okay. And does anyone else assist you in
8 making that determination?

9 A. Not really. The other two guys -- the
10 other two people in the room with me see what I'm
11 seeing. But I'm pretty much the one to make that
12 decision.

13 Q. Okay. It also says here that the hands
14 are taped to the arm support to prevent movement. Why
15 do you do this?

16 A. For two reasons we tape the hands down.
17 Now, if the IV is started in either the fossa or the
18 wrist, you can tape the hands up. If you have to start
19 it in back of the hand or a certain portion of the
20 wrist, we tape the hands down.

21 We do that for two reasons. One reason
22 is if we get any, let's say, obscene gestures through
23 the process.

24 And the second reason, and the most
25 important, is to keep the arm -- from the inmate

1 twisting the arm back and forth, around, and loosening
2 the or damaging the IV line.

3 Q. Okay. And that would -- are you -- do
4 you mean that the inmate might try to do that
5 purposefully?

6 A. Well, could. We don't take that chance.

7 Q. I see. And what type of tape do you use
8 to tape the hands to the arm support?

9 A. Medical.

10 Q. So it's the same type of tape you use for
11 the ports?

12 A. Yes, only wider. Yes.

13 Q. Okay. Does anyone remain inside the
14 execution chamber after the hands are taped in place?

15 A. The warden and the associate warden.

16 Q. Okay. I'm looking at Page 44. The top
17 -- the top of the page says "Chemical Administration
18 and IV Monitoring."

19 A. Okay.

20 Q. And then in Step 4, it says: "Designated
21 members of the IV team enter the lethal injection room
22 and assume their preassigned stations."

23 Who preassigns these stations, without
24 telling me their name?

25 A. The warden.

1 Q. Is the warden the only person that
2 preassigns these?

3 A. Yes, that would be the executioner; so
4 yes, he'd be -- he'd be the one that was assigned.

5 Q. And when it says "designated members of
6 the IV team," is the warden the person that designates
7 these members?

8 A. Yes.

9 Q. Okay. And when are these preassignments
10 and these designations made?

11 A. You'll have to ask the warden. I don't
12 know. Like my position, I've been in it for years, so
13 I don't know. The other people, I don't know exactly
14 when they were assigned.

15 Q. Okay. In Section 5 under that, it says:
16 "The executioner selects either the left or
17 right solution set line based on the flow
18 drip inside the drip chamber. If both
19 lines are equal, the left line nearest the
20 executioner is used."

21 What does "based on the flow/drip" mean?

22 MR. MITCHELL: Form.

23 THE WITNESS: The drip in the -- in the
24 drip chamber of the IV line. The IV line,
25 sometimes the saline, sodium chloride, there's a

1 -- there's an IV drip.

2 If you have a good line, the better the
3 drip is. Like one, if you have your line all the
4 way it'd be a steady stream or a drip every
5 second.

6 So that's what we're talking about; how
7 good that line is, how good is the flow in that
8 line.

9 BY MS. LEONARD:

10 Q. Okay. And how do you evaluate that?

11 A. Just by the drip and the flow.

12 Q. You just look at it?

13 A. Yes.

14 Q. Okay. Is there any sort of measurement
15 system that tells you about the drip or flow?

16 A. No.

17 Q. Do you consult with anyone else in making
18 that decision?

19 A. No.

20 Q. The warden doesn't weigh in on that?

21 A. The warden is not in the execution
22 room -- I mean, in the -- in the execution chamber, no.

23 Q. Okay. And what experience do you have
24 that qualifies you to make that decision?

25 MR. MITCHELL: Form.

1 THE WITNESS: Six executions. I mean, I
2 don't know how else to word that. I'm not
3 being -- I mean, I know that -- when the line is
4 working and when it's not. If there's -- if
5 there's no drip in the drip chamber, if it's not
6 dripping and the arm is swelling, the catheter in
7 the vein isn't working. So it's time to find a
8 new vein, a new location.

9 If the line is dripping in the drip
10 chamber with no swelling, the line's good.

11 BY MS. LEONARD:

12 Q. Okay.

13 A. And that -- that goes back to the IV
14 training all the way back to about, what was it, 1998,
15 or whenever I went through that, and all the training
16 we get annually from the EMTs and going over this with
17 them.

18 So that's how we know that's how it's a
19 good thing.

20 Q. Okay. And why is it the left line that's
21 used, if they're both equal?

22 A. The shorter -- it's a shorter distance
23 for the drugs to travel. The left -- left arm is
24 closer, and I can see it either through the camera or
25 clearly through the window.

1 Q. Okay. Who -- who made the decision to
2 use the left line, if both are equal?

3 MR. MITCHELL: Form.

4 THE WITNESS: Me.

5 BY MS. LEONARD:

6 Q. You make that decision?

7 A. I do.

8 Q. Do you consult anyone else in making that
9 decision?

10 A. No.

11 Q. Okay. In Section 6, it says: "When the
12 warden gives the signal to proceed with the execution,
13 the executioner clamps the line near the spike."

14 What does it mean to clamp the line near
15 the spike?

16 A. Your -- the solution set has the drip
17 chamber, and somewhere on the line there's going to be
18 a clamp up near the drip chamber.

19 What it used is called a -- it's a roller
20 clamp. You take your thumb and roll it down and it
21 clamps off the line from the drip chamber in the bag.
22 So when you start with the push with the syringe,
23 there's no backflow going up into the bag. It goes
24 into the inmate.

25 If you don't take it all, the drugs will

1 follow the path of least resistance and will flow up
2 into the bag. So you clamp the bag off so the drugs go
3 where they're supposed to go.

4 Q. Okay. And how does the warden give you
5 that signal?

6 A. He has -- we discussed this before the
7 execution to make sure we're on the same page. And so
8 far, it has been a certain way he rubs his -- he rubs
9 his face or rubs his chin.

10 Q. So is that something that only you and
11 the warden understand?

12 A. I think we've probably done it enough
13 that everybody kind of realizes it now that sees it,
14 but yes.

15 Q. And what's the purpose of using a signal
16 that only the execution team has seen?

17 A. Well, probably you have victims,
18 witnesses, you have official witnesses watching all
19 this. So it's probably just a subtle -- a subtle way
20 of doing it.

21 Q. I see. In Section 7, which is on the
22 next page, 45, it says: "The Executioner pushes on the
23 plunger of the No. 1 syringe, red, with a slow, steady
24 pressure."

25 What is a slow, steady pressure?

1 A. Whatever the vein will allow.

2 Q. So does this go back to -- does this go
3 back to --

4 A. We discussed this, with the size of the
5 catheter, the location. And everybody is different
6 when you do -- you know, when you do the IV.

7 Q. Okay. So this gets back to our previous
8 discussion about going by feel?

9 A. Right, exactly.

10 Q. And in the same step, it says who -- it
11 says there -- "Should there be or appear to be swelling
12 around the catheter, or if there is resistance to the
13 pressure, the executioner pulls the plunger back."

14 Who is watching for the swelling around
15 the catheter?

16 A. I am.

17 Q. And is anyone --

18 A. And the other person, the one we
19 mentioned, the observer; that's his job, to watch that
20 camera and see if he sees anything unusual. And we're
21 all -- all three of us are kind of watching. So yeah,
22 I'm watching, the other two are watching.

23 Q. Okay. And if -- if that happens, you
24 pull back on the plunger?

25 A. If you -- if it's a -- on a good line, if

1 you pull back on a plunger, when the -- when the EMTs
2 first insert the catheter, they know they have a good
3 line with a flash in the catheter. A flash of blood
4 will fill the chamber and catheter, and they know they
5 have a line.

6 This is the same premise that if there's
7 an issue right before I start, I can pull back on the
8 plunger just a little bit and the line I use will fill
9 with blood just a little bit. That's an indicator that
10 I have a good line.

11 Q. Okay. I think I understand all that.

12 So it says "If there is no blood, the
13 executioner discontinues with this line."

14 Why is that?

15 A. Well, if I pull back -- if there's
16 swelling and I pull back and nothing is happening, and
17 there's -- even if you try to do a push it's not going
18 anywhere, that means the catheter has went all the way
19 through the vein or just nicked the side of the vein
20 and the drug is not going in the vein.

21 Q. Okay. So in that case, you switch to the
22 blue line instead?

23 A. I would. We would cut that line off. I
24 would cut the drug off, cut it off completely and go to
25 the blue, the blue set.

1 Q. Are you the only person that decides to
2 make that switch?

3 A. Yes.

4 Q. Does the warden assist in that decision?

5 A. No.

6 Q. Do the recorder and observer help you
7 make that decision?

8 A. They could, but probably not. It's my
9 decision alone.

10 Q. And have -- have you switched to the blue
11 line in previous executions?

12 A. Never.

13 Q. "Never," you said?

14 A. Never.

15 Q. Without identifying the person, is it
16 always the same IV team member who hands you the
17 syringes?

18 A. When you say "always," how far back are
19 we going? The last two? The last two, yes.

20 Q. Okay. And is that always, say, the
21 recorder or the observer? You don't need to -- you
22 know, is it -- is it the observer that does it?

23 A. No, the observer is over there watching
24 the camera and just keeping an eye on everything.

25 The recorder would be the one who hands me

1 the syringes as needed and records when they were pushed.

2 Q. Okay. And it's always the recorder that
3 does that?

4 A. Yes, ma'am.

5 Q. Okay. I understand.

6 What happens if one of the IV team members
7 observes that the order of syringes is not correct?

8 MR. MITCHELL: Form.

9 THE WITNESS: Well, that would be me, and
10 then I would get the correct one. I'm not taking
11 them out of order.

12 BY MS. LEONARD:

13 Q. Right. And what if the order is not
14 correct? What if there's a misunderstanding?

15 A. It will be correct. It is correct. You
16 go 1 through 9, you double and triple check. There is
17 no not correct.

18 Q. Okay. And how do you ensure, it says in
19 Step 9 that:

20 "After the last syringe has been injected,
21 the executioner closes the extension line
22 with a clamp and opens the line below the
23 spike to allow a drop of 1 to 2 drops per
24 second in the drip chamber."

25 How do you ensure that this happens?

1 A. When the execution is complete, when the
2 last syringe is pushed, there's a clamp. It's a set of
3 like forceps that comes off that line. I reach up and
4 I open up the clamp as we discussed earlier, open it
5 where there's a drip. I count one through six, one
6 drip, and let it run.

7 Q. Okay. And is the one to two drops a
8 second measured?

9 A. No.

10 Q. Is that just something you eyeball?

11 A. Yes. And it may not even be that. It
12 may be a drop every three or four seconds, as long as
13 it's running. Because after the last syringe is given
14 the purpose of that is if there's any drugs left in the
15 line, to press it all out.

16 Q. So -- sorry. So you're suggesting that
17 it could be more than one to two drops per second?

18 A. It could be more than one or two, or it
19 could be less. But normally if it's more than one or
20 two, I would close the clamp in that, close the clamp
21 down then. It would be just one, two.

22 Q. Okay. Why does it matter if it's one or
23 two, versus three or four?

24 A. It doesn't, at that point.

25 Q. It does not matter whether it's one or

1 two or three or four?

2 A. Not if all nine syringes have been used,
3 it doesn't matter. It does not vary at all.

4 Q. Okay. I see. I see what you're saying.
5 So in Step 10, it talks about the
6 executioner signaling the warden that all the LIC and
7 saline solution have been administered. How do you give
8 the warden that signal?

9 A. As we discussed before, there is a
10 white-looking block that is placed in the port where
11 the IV lines are at. And when he sees that, he knows
12 that all syringes have been given.

13 Q. Okay. And is that because the warden
14 can't see into your window? Is that right?

15 A. There's no way, other way, of notifying
16 him. That's the signal that we are -- that the process
17 is complete.

18 Q. Right. Okay.

19 MS. LEONARD: We've been going for a
20 little over an hour. Do you want to take a
21 10-minute break here?

22 MR. MITCHELL: Sure thing. 2:25 to 2:35?

23 MS. LEONARD: That sounds great.

24 THE VIDEOGRAPHER: We are off the record
25 at 2:14 p.m.

1 (Recess at 2:14 p.m. to 2:26 p.m.)

2 THE VIDEOGRAPHER: Okay. We are back on
3 the record. The time is 2:26 p.m.

4 BY MS. LEONARD:

5 Q. Executioner, I just wanted to follow up
6 quickly on the signal you give to the warden. I
7 believe you explained it this morning, but it is a
8 block, you said, that's wrapped in a bandage? Is that
9 what you said?

10 A. It's a -- no, it's an ACE bandage wrapped
11 up in the shape of a block with the -- with medical
12 tape.

13 Q. All right. It's an ACE bandage wrapped
14 up in the shape of a block --

15 A. Right.

16 Q. -- and then wrapped up with medical tape?

17 A. Yes.

18 Q. Got it. Okay. And -- and you said that
19 you stick it on one of the ports, or you put that in
20 the door between the ports?

21 A. The door is one of these little
22 8-by-8-inch doors that the line goes through. On that
23 door, I place it in that area and close the door behind
24 it.

25 Q. Okay. Okay. I understand. I just

1 wanted to backtrack. On Page 42, I had one
2 more question.

3 A. I'm sorry, I'm lost. Which exhibit?

4 Q. I'm sorry. It's Exhibit 1, the protocol.

5 A. Okay. 42?

6 Q. Page 42.

7 (Pause.)

8 THE WITNESS: Okay.

9 BY MS. LEONARD:

10 Q. Okay?

11 A. Yes.

12 Q. In Item 6, we had talked about the
13 different locations for veins that could be used. Have
14 you ever seen the EMTs use a vein in the forearm?

15 A. In practice or in real?

16 Q. In a real execution.

17 A. No.

18 Q. Have you are seen them use the wrist?

19 A. No.

20 Q. Have you ever seen them use the back of
21 the hand?

22 A. No.

23 Q. Have you ever seen the top of the foot?

24 A. No.

25 Q. Have you ever seen the ankle, lower leg,

1 or any other location?

2 A. No.

3 Q. And how about in practice?

4 A. Yes.

5 Q. Which one of those have you seen the EMTs
6 use in practice?

7 A. All of those at some point in time.

8 Q. So the EMTs have at some point or
9 another --

10 A. Yes.

11 Q. -- practiced with the forearm, wrist --

12 A. Yes.

13 Q. -- back of the hand, top of the foot, and
14 ankle?

15 A. Yes.

16 Q. Are there any other locations they've
17 used?

18 A. Not that I am aware of.

19 Q. Okay. I'm going to move down in the same
20 exhibit to Page 51.

21 A. Okay.

22 Q. This says "Execution Team" at the top of
23 the page. Is that what you're looking at?

24 A. Yes.

25 Q. Okay. Great. In Item 3, it says:

1 "Readily available to the execution team are radios
2 with holster, keys, and restraints."

3 What does it mean that these are readily
4 available?

5 A. It means if you need them, they're
6 available.

7 Q. Do you use this equipment?

8 A. No.

9 Q. Have you ever used this equipment?

10 A. No.

11 Q. Does anyone else use this equipment?

12 A. Yes.

13 Q. Who uses it?

14 MR. MITCHELL: Objection.

15 THE WITNESS: Well, when they're planning
16 the -- the -- I'm trying to think of the proper
17 name, but the death watch. I was on death watch
18 three days.

19 The extraction team, maybe, because the
20 extraction team has to communicate with me. The
21 IV team has a radio to communicate with signal
22 control for when they move people into place. The
23 escorts have radios to move people into place.
24 The victim's family, the official visitors, all
25 that is coordinated through radio.

1 Q. Okay. But you never use a radio?

2 A. No, ma'am.

3 Q. Okay. In Section 4, there's a list of
4 procedures there by letter. In the first one, letter
5 A, it says "The Execution Team's Officer in Charge."
6 Who is that, without giving me a name?

7 A. That would have to be the warden, because
8 he's the one that would make sure all that's done.

9 Q. Okay. The officer -- the execution
10 team's officer in charge is the warden?

11 A. Yes.

12 Q. And it says "And/or the assistant officer
13 in charge." Again, without giving me a name, who is
14 the assistant officer in charge?

15 A. I assume that would be the assistant
16 warden.

17 Q. You would presume, but you don't know for
18 sure?

19 A. No.

20 Q. And have you ever heard these terms used,
21 the "officer in charge" or the "assistant officer in
22 charge?"

23 A. No.

24 Q. It says here that either one of these
25 officers could conduct a training session. Have you

1 ever seen the assistant officer, who I believe you just
2 said was the associate warden, conduct a training?

3 A. Not that I recall.

4 Q. Not that you've ever seen?

5 A. No.

6 Q. Okay. So every training you've ever gone
7 to has been conducted by the warden?

8 A. Yes.

9 Q. Okay. And then when it says "The
10 training includes a simulated execution," is that the
11 same simulated execution we discussed earlier?

12 A. Yes.

13 Q. And you do not practice mixing the drugs?

14 A. No.

15 Q. Do you ever practice mixing the drugs,
16 aside from the simulated execution?

17 A. The only time I mix drugs is right before
18 an execution.

19 Q. So you only ever do it when a real
20 execution is taking place?

21 A. Correct.

22 Q. Okay. In Section 4 also, it says here
23 that a -- "Conducts a training session at least once
24 each month, at time" -- "at which time all equipment
25 will be tested."

1 Does this session happen at the same time
2 each month?

3 A. No. The warden sets it. We have
4 training every month, but the warden sets the time and
5 date. It's usually at 1:00 in the evening. But he
6 sets the date, and that's when we show up and get our
7 monthly training.

8 Q. Okay. Sorry, you said the time was
9 usually 5:00 in the evening?

10 A. 1:00.

11 Q. 1:00?

12 A. Yes.

13 Q. Okay. I just wanted to make sure I heard
14 that correctly.

15 Is it -- and we also have in the section a
16 section that's says:

17 "A week before a scheduled execution, the
18 officer in charge and assistant assembles
19 the execution team in the execution chamber
20 area to prepare and test all appliances and
21 equipment for the scheduled execution."

22 What appliances and equipment are tested?

23 A. It depends on which execution process
24 we're talking about. If --

25 Q. For --

1 A. If we're talking about lethal injection,
2 the cameras, the sound equipment so everybody can hear,
3 and the visitors, the official visitors and -- and the
4 victim's family.

5 All the cameras. So everybody that needs
6 to see what's happening has the camera in the injection
7 room. All that -- all that's gone through.

8 Q. Are you part of the -- that session?

9 A. I'm there for the training.

10 Q. Okay. So --

11 A. If there's a problem with a camera in the
12 injection room, we'll let somebody know.

13 Q. And who would you let know about that,
14 without naming the name of the person?

15 A. The IT.

16 Q. I'm sorry about that?

17 A. IT.

18 Q. The IT team?

19 A. Yeah.

20 Q. And how long does it take to test all the
21 appliances and equipment?

22 A. I don't know. Not long in my area. It's
23 part of the monthly training, the hour and a half we
24 train every month.

25 Q. And this testing is part of the hour and

1 a half?

2 A. Yes. Again, that's the point of -- the
3 point of doing this, to make sure that everybody knows
4 what they're doing and all the equipment runs.

5 Q. Okay. I see. So the simulated execution
6 involves what we talked about before. So the IV
7 insertion, but it also includes testing the
8 equipment --

9 A. Yes.

10 Q. -- and making sure the camera is working
11 and all of that?

12 A. Yes.

13 Q. Okay. How does the warden ensure that
14 the execution team carries out the following
15 instructions that are listed on these two pages?

16 MR. MITCHELL: Object to form.

17 THE WITNESS: Which? Give me the
18 numbers.

19 BY MS. LEONARD:

20 Q. Yeah. So in Item 4C, it says: "The
21 warden ensures that the execution team carries out the
22 following instructions." And then, right, there's a
23 set of numbers that extends onto the next page.

24 How does the warden ensure that those
25 instructions happen?

1 MR. MITCHELL: Same objection.

2 BY MS. LEONARD:

3 Q. Sir, you can answer.

4 A. I mean, he's there when the inmate is
5 taken out of his cell. He's there when he's in the
6 execution chamber being strapped down to the gurney.

7 Q. So you said at the beginning the warden
8 is there for some of it? I just want to make sure I
9 heard it.

10 A. He's there for all of it. He is in the
11 execution chamber. He's sitting there when the inmate
12 is taken out of the cell and brought into this
13 execution chamber. He's there for all of it.

14 Q. So the warden is in the execution chamber
15 while the execution team is doing all of these steps,
16 1 through 10 on pages 51 and 52?

17 MR. MITCHELL: Form.

18 THE WITNESS: Well, he's there when the
19 inmate is removed from the cell to the execution
20 chamber. He's there when he's -- when the
21 execution team is in the holding area. He's there
22 when the physician pronounces the inmate deceased.
23 He's there when the inmate is moved. He's there
24 when the inmate is placed in the medical
25 examiner's vehicle. He's there for all that.

1 BY MS. LEONARD:

2 Q. Okay. I see. So he's there for the
3 whole thing, and that's --

4 A. Yes.

5 Q. -- how he's ensuring? Okay.

6 And No. 2 says: "Ensure that all equipment
7 is properly placed." Is the warden responsible for that?

8 A. In an execution process, technically the
9 warden is responsible for all it -- technically.

10 But yes, all this is -- before this,
11 basically everything has been tested and tested again
12 and people are standing by. There are people following
13 with a camera, with a sound system. We have IT
14 standing by.

15 If there is a problem with the locks,
16 keys, we have the key control sergeant and officer
17 standing by.

18 So, yeah, everything's prepared and ready.

19 Q. Okay. At the very bottom of Page 51,
20 Item 6, it says: "After the physician pronounces the
21 inmate deceased, the designee informs the commissioner
22 that the sentence has been carried out."

23 Who is the designee, without giving any
24 name?

25 A. I'm assuming that's the warden.

1 Q. You're assuming that's the designee? You
2 don't know for sure if the warden is the designee?

3 A. That's not my area; no, ma'am.

4 Q. In the past executions that you've been
5 in, is it the warden that informs the commissioner?

6 A. Again, I'm a little busy at the time.
7 But I think he's the one that if there's -- if it's
8 been completed, I think he would be the one the
9 commissioner would want to hear from. So yeah, I
10 think -- I think it's him.

11 Q. Where is the commissioner located after
12 the physician pronounces the inmate deceased?

13 A. Where is the commissioner after he's
14 pronounced deceased?

15 Q. Yes.

16 A. He's in the Riverbend administration
17 building.

18 Q. Okay. So -- so how does someone get in
19 contact with him to let him know that the execution is
20 over?

21 MR. MITCHELL: Form.

22 THE WITNESS: We -- we discussed this
23 earlier. There's a telephone in the corner that
24 he would pick up and ask the commissioner or
25 somebody if there is a stay or whether to proceed

1 with the execution. So, yeah, there's a phone
2 there.

3 BY MS. LEONARD:

4 Q. Okay. And has -- have you ever seen
5 anyone besides the warden use that phone?

6 A. Never.

7 Q. Okay. So it's probably safe to assume
8 that the warden is the designee who informs the
9 commissioner?

10 A. That's -- that's my assumption; yes,
11 ma'am.

12 Q. Okay. I see. In Step 7, who removes the
13 body and places it in the body bag?

14 A. That would be personnel from the medical
15 examiner's office.

16 Q. Who places the LIC and the syringes in
17 the body bag?

18 A. We discussed that. It could be me, it
19 could be a member of the injection team. It could be
20 the EMTs. There's only one person designated to do
21 that job.

22 Q. So is it just whomever is available?

23 A. Well, there's a trash can on the IV cart
24 that's taken into the execution chamber when the IVs
25 are started. So I would think the EMTs would take care

1 of that one.

2 There's a trash can in the injection room
3 with all the syringes, lines, empty bottles. One of us
4 three in that room would take care of that.

5 Q. And have you ever been the person to
6 throw away -- to put the LIC and the syringes in the
7 body bag?

8 A. They're in the -- either -- either in the
9 body bag or in the back of the van, wherever the
10 medical examiner team wants them.

11 Q. So do you not always put the LIC syringes
12 in the body bag?

13 A. I don't know. I don't remember. I
14 believe we put them wherever they ask us to put them.

15 Q. Okay. So if the medical examiner asks
16 you to put them in the back of the van, then you put
17 them in the back of the van?

18 A. As long as they take responsibility for
19 them, yes.

20 Q. All right. And whose responsibility is
21 it to ensure that the LIC and syringes are given to the
22 medical examiner?

23 A. There's no one person that's designated
24 to make sure it happens. I know, when the execution is
25 over with, all the items are collected. I take the IV

1 bags down.

2 More than likely it's going to be me, but
3 it don't have to be me.

4 Q. Okay. And has it been you in the past?

5 A. I think I have, yeah.

6 Q. And has anyone helped you do that in the
7 past?

8 A. I don't know. I don't know.

9 Q. In the next step, what does it mean to
10 clean the equipment in the death watch area?

11 MR. MITCHELL: Form.

12 THE WITNESS: Hello? Are you there?

13 Hello?

14 BY MS. LEONARD:

15 Q. Sorry. Did you not hear -- can you hear
16 me?

17 A. No. You faded out, I think.

18 Q. Are you able to hear me now?

19 A. I can, yes.

20 Q. Okay. I'm sorry about that. Let me
21 repeat the question.

22 A. Okay.

23 Q. In Step 9, what does it mean to clean the
24 equipment in the death watch area?

25 MR. MITCHELL: Form.

1 THE WITNESS: I don't -- I don't really
2 know how to explain it, other than make sure the
3 floors are clean, put a new -- a new sheet on the
4 gurney.

5 There's a break room in the area for the
6 officers assigned to death watch. Make sure those
7 trash cans are clean. Just make sure the place is
8 clean.

9 BY MS. LEONARD:

10 Q. And what does it mean to sanitize the
11 mattress and pillow?

12 MR. MITCHELL: Same objection.

13 THE WITNESS: Well, the inmate was in a
14 cell for 72 hours, so they would have to clean
15 that cell in preparation for if another one goes
16 back there.

17 So they take chemicals and sanitize the
18 sheets, wash the sheets. Sanitize the cell, the
19 mattress. All that.

20 BY MS. LEONARD:

21 Q. And when does this occur?

22 A. It'd be the day -- the day after,
23 probably the day after the execution. Because by the
24 time everything gets done -- it could be done the night
25 of, but it depends on what time everything wraps up;

1 9:00, 10:00, or they may wait until the next morning.

2 Q. Is it ever later than the day after the
3 execution?

4 A. I don't know.

5 Q. Are you part of the execution team that
6 does this cleaning?

7 A. No.

8 Q. Okay. And who -- who's the person that
9 makes the entry into the post log documenting the
10 completion of these procedures?

11 A. I don't know.

12 MR. MITCHELL: I was just going to log an
13 objection if you were to say who that person was.
14 But Executioner, what was your answer?

15 THE WITNESS: I do not know.

16 BY MS. LEONARD:

17 Q. And the final -- final step there, it
18 says: "The execution chamber and death watch areas are
19 secured." Who secures the execution chamber and death
20 watch areas?

21 A. You would have to ask the warden.
22 Probably the last person to help after cleaning, or
23 whoever has the key to the area.

24 Q. Have you ever been the person that
25 secures the execution chamber or the death watch area?

1 A. No, ma'am. I'm never the last one out.

2 Q. And it says: "The execution team reports
3 to the warden's office for additional instructions."
4 Where is the warden's office located with respect to
5 the execution chamber?

6 A. In the administration building. The
7 execution chamber is in a whole nother building behind
8 the fence. The warden's is Building 7, which is
9 outside the fence.

10 Q. So how far away are those buildings from
11 each other?

12 A. I'm not good at measurements, but I'd say
13 75 yards.

14 Q. Okay. So how long does it take you --
15 how long does it take you to walk over to the warden's
16 office? Do you walk there?

17 A. From -- from the execution?

18 Q. Right.

19 A. Well, there's variables in that. It
20 depends on when you're leaving, how fast the officer in
21 the control room can open one, two, three, four doors.

22 In a prison, you just can't just walk in
23 and out, you have to wait for them to open the doors.

24 So it would take the fastest probably is
25 five minutes. It can take ten minutes or longer.

1 Q. Okay. And what type of additional
2 instructions does the warden give you when you report
3 to his office?

4 A. I don't know if he ever give me any
5 instructions. He talks about the process. He talks
6 about if there's anything anybody needs to discuss with
7 any of our mental health people. He'll do that. And
8 that's pretty much it. Just wants to thank everybody
9 for their -- for their help and dedication and
10 appreciate what they do.

11 Q. And you mentioned that sometimes it gets
12 to be pretty late at night by this point. Does the
13 warden ever skip these meetings?

14 A. I don't know. Not that I know of.

15 Q. Do you ever -- or did you ever
16 participate in an execution where you did not report to
17 the warden's office after the execution?

18 A. It might not be the warden's office. It
19 could be the visitation area, it could be the muster
20 room. It would be a different area, not necessarily
21 the warden's office.

22 Q. But you've always met with the execution
23 team and the warden at the end of an execution?

24 A. As far as I remember, yes.

25 Q. Okay. I'm going to skip forward in

1 Exhibit 1 to Pages 66 and 67. So the top of 66 --

2 A. In the same -- in the same exhibit?

3 Q. Same -- same exhibit, yes.

4 The top of Page 66 says "7:10 pm."

5 A. What page are we on?

6 Q. 66, six-six.

7 A. Okay. Go ahead.

8 Q. Where is the lethal injection recorder
9 located while you begin to administer the first
10 chemical?

11 A. Well, there's two recorders. There's
12 one, I think they're gone. The lethal injection
13 recorder is in the control room in the -- let's see
14 which one we're talking about. Which -- which number
15 is it?

16 Q. The number -- I'm looking in Item 4:
17 "The warden gives the signal to proceed and the
18 executioner begins to administer the first chemical."

19 A. The lethal injection, the one in our room
20 is right beside me.

21 Q. And is that the --

22 A. There's another recorder in the -- in
23 the -- it's hard to talk with this reverb.

24 In the -- in the control room -- control
25 room, he documents when the inmates -- the inmates.

1 When the visitors are moved, when the official visitors
2 are moved, when the inmate is taken into the chamber.
3 There's another recorder that documents all that. The
4 one in the execution chamber is the injection room with
5 me is standing right beside me.

6 Q. Okay. And are you having trouble with
7 your audio? Did you just say you're getting some
8 reverb?

9 A. The reverb or something. I'm hearing
10 myself, and it's messing me up.

11 MS. LEONARD: Do you want to pause and
12 see if somebody might be able to help you with
13 that?

14 THE WITNESS: I don't know that it -- no,
15 we'll keep going for now.

16 MS. LEONARD: Okay. Well, if it gets
17 worse or it's hard for you to concentrate, just
18 let us know and we will see if we can try to help
19 fix that, maybe.

20 THE WITNESS: Okay.

21 BY MS. LEONARD:

22 Q. In No. 5, it says:
23 "After 500 milligrams of midazolam and a
24 saline flush have been dispensed, the
25 executioner shall signal to the warden and

1 await further direction from the warden."

2 I believe you mentioned this pause earlier,
3 too. What is the purpose of the pause?

4 MR. MITCHELL: Form.

5 THE WITNESS: The warden does the
6 consciousness check.

7 BY MS. LEONARD:

8 Q. And how do you do that signal?

9 A. It's the same little square flag that I
10 set in the room.

11 Q. Okay. And then in Section 6, it says:
12 "The warden shall wait two minutes
13 following the administration of midazolam
14 and the saline flush before assessing the
15 consciousness of the inmate."

16 What is the purpose of waiting two minutes?

17 A. I don't know. I don't know exactly,
18 unless he's waiting to make sure that the drugs,
19 chemicals, have done what they're supposed to do.

20 Q. Who times the two minutes?

21 A. The warden.

22 Q. And so when he sees the signal from you,
23 he starts timing two minutes and then he does the
24 consciousness check?

25 A. I'm assuming that's what he does. That's

1 -- when I set the -- the object in the window, he
2 should start doing a countdown then.

3 Q. Okay. And why is it two minutes?

4 A. I can't answer that.

5 Q. You can't answer it because you don't
6 know the answer?

7 A. I don't know; yes, ma'am.

8 Q. Have you ever discussed why it's two
9 minutes with anyone else on the execution team?

10 A. No, ma'am.

11 Q. Do you practice waiting two minutes
12 during the simulations?

13 A. Yes.

14 Q. Okay. In Section 7, do you need a second
15 to read that? That one's a little bit longer.

16 A. No, ma'am; I understand that.

17 Q. Okay. It looks like it's talking a
18 little bit more about the consciousness check. Is
19 there a difference between being asleep and being
20 unconscious?

21 A. I would think so.

22 Q. How would you describe that difference?

23 MR. MITCHELL: Object to form.

24 THE WITNESS: If you're asleep, you can
25 wake up. If you're unconscious, your body ain't

1 going to wake up if they rub your eyelashes.

2 BY MS. LEONARD:

3 Q. So you think if you're asleep, if someone
4 rubs your eyelashes you'd wake up?

5 A. Yells your name or pinches your nerve in
6 your neck, you'd probably wake up.

7 Q. And do you think it's possible that
8 someone could be unconscious and still not respond when
9 their eyelashes are rubbed or their shoulders grabbed?

10 MR. MITCHELL: Object to the form.

11 THE WITNESS: I do not know.

12 BY MS. LEONARD:

13 Q. You do not know?

14 A. I do not know.

15 Q. Are you aware of any medical standards
16 relating to consciousness checks?

17 A. I am not.

18 Q. You don't know whether you're aware of
19 them or you don't know what they are?

20 A. I'm not aware of them.

21 Q. You've never heard of any medical
22 standards for checking consciousness?

23 A. Not that I know of; no, ma'am.

24 Q. Okay. Do you know whether moving fingers
25 is an indication of consciousness?

1 A. I do not.

2 Q. You don't know whether it is?

3 A. I don't know, no.

4 Q. Okay. And in Section -- the final
5 sentence of Section 7 says: "If the condemned inmate
6 is responsive, the warden shall direct the executioner
7 to switch to the secondary IV line."

8 What does it mean to be responsive?

9 A. That's the warden's decision.

10 Q. So if you were to see the inmate move but
11 the warden directed you to switch to the other line, do
12 you always agree with that?

13 MR. MITCHELL: Form.

14 THE WITNESS: I don't know. I wouldn't
15 agree with it doesn't qualify, because it's never
16 happened.

17 If I see something the warden didn't see,
18 there's a telephone where I can contact the warden
19 and ask him to look and check again.

20 BY MS. LEONARD:

21 Q. Okay. So if you were to see -- if the
22 warden did the consciousness check and then he told you
23 to proceed with the second and third drugs, but you saw
24 the inmate move, you would be able to call the warden
25 and discuss that with him?

1 A. I would. And there's also the associate
2 warden in there with him watching the same thing the
3 rest of us are.

4 Q. By "in there," do you mean in the
5 execution chamber?

6 A. Yes, standing next to the inmate.

7 Q. Okay. And is the associate warden always
8 inside the execution chamber with the warden?

9 A. Always.

10 Q. Okay. Does the associate warden help the
11 warden make decisions inside the execution chamber?

12 MR. MITCHELL: Form.

13 THE WITNESS: Not that I know of.

14 BY MS. LEONARD:

15 Q. So he's there just more as an observer?

16 MR. MITCHELL: Form.

17 THE WITNESS: I don't know. You would
18 have to ask the warden and the associate warden
19 what the role is.

20 BY MS. LEONARD:

21 Q. Right. Okay.

22 Why is it that you switched to the
23 secondary IV line if the inmate is responsive?

24 A. If he is?

25 MR. MITCHELL: Form.

1 THE WITNESS: We start all over again
2 with the blue No. 1, blue No. 2, 50 cc's of
3 midazolam.

4 BY MS. LEONARD:

5 Q. And why do you do that?

6 A. Because the protocol says so.

7 Q. And do you understand what the purpose of
8 starting over again with midazolam is?

9 A. All I can say is because the protocol
10 says that's what I do.

11 Q. And did you -- you indicated earlier that
12 you helped create the protocol. Did you help create
13 that part of the protocol?

14 A. I'm not a doctor. I am not a pharmacist.
15 I know how to set up the protocol with past experience
16 working on death watch, leading the countdown team,
17 leading the countdown team for the --

18 MR. MITCHELL: Executioner, I'm going to
19 -- I'm going to interrupt and instruct you not to
20 answer based on the protective order.

21 THE WITNESS: Okay.

22 MR. MITCHELL: Can we strike from the
23 record the executioner's answer there?

24 BY MS. LEONARD:

25 Q. I'm going to move to the next section

1 here, Section 8. It says: "Following the completion
2 of the lethal injection process and a five-minute
3 waiting period." What is the purpose of the
4 five-minute waiting period?

5 MR. MITCHELL: Objection.

6 THE WITNESS: I don't know.

7 BY MS. LEONARD:

8 Q. What do you do while the physician is
9 completing his examination?

10 A. Wait.

11 Q. And -- okay. Who is the warden's
12 designee to whom the physician reports his findings?

13 A. The physician is in the room with the
14 warden and the deputy with the microphone on. When he
15 announces the death, it's so everybody -- the
16 witnesses, the -- well, the official witnesses, the
17 victim's family can hear the doctor's pronounced death.

18 Q. So does the doctor say that into the
19 microphone?

20 A. Yes.

21 Q. Okay. And so when it says in Step 10
22 "The warden or designee announces that the sentence has
23 been carried out," is that the warden repeating what
24 the physician already said?

25 A. No, the warden says: "The sentence of"

1 -- whoever -- "has been carried out. Please exit."

2 That's pretty much what he says.

3 Q. Okay. And is that after the physician
4 has already said that the inmate is deceased?

5 A. Yes.

6 Q. Okay. I see.

7 And then in Section 12 that's on the next
8 page, it says: "The commissioner or designee notifies
9 all appropriate state officials that the sentence has
10 been carried out."

11 Who is this designee --

12 A. I don't know.

13 Q. -- without naming a name?

14 A. I don't know.

15 Q. And who are the appropriate state
16 officials that are informed?

17 MR. MITCHELL: Form.

18 THE WITNESS: I do not know.

19 BY MS. LEONARD:

20 Q. Do you have any part in that process?

21 A. I do not.

22 Q. And then the final step there is 16:
23 "The lethal injection recorder completes the lethal
24 injection execution recorder checklist."

25 What happens to the lethal injection

1 execution recorder checklist after it's completed?

2 MR. MITCHELL: Form.

3 THE WITNESS: I do not know. I think the
4 warden collects all forms, logbooks. He collects
5 all that for him and the Legal Department, I
6 think.

7 BY MS. LEONARD:

8 Q. Have you ever read that checklist?

9 A. No.

10 MR. MITCHELL: Form.

11 BY MS. LEONARD:

12 Q. Do you know where the checklist is
13 stored?

14 A. No.

15 Q. Have you ever reviewed any of the
16 paperwork from an execution?

17 MR. MITCHELL: Form.

18 THE WITNESS: Yes.

19 BY MS. LEONARD:

20 Q. What paperwork have you reviewed?

21 MR. MITCHELL: Same objection.

22 THE WITNESS: I do not recall. This was
23 years ago.

24 BY MS. LEONARD:

25 Q. Why would you have --

1 A. Why would I have done it? To verify
2 something that I was being deposed about.

3 Q. Okay. And but for -- aside from
4 depositions, would you ever review any of the paperwork
5 from an execution?

6 A. I can't think of any reason why I would,
7 no.

8 Q. Does anyone ever --

9 A. I said -- I said no. I don't know of any
10 reason I would, and I don't even know where they keep
11 that.

12 Q. Okay. And it's -- the paperwork's never
13 reviewed in trainings?

14 A. Not that I know of, because in training
15 if there is any issue it would come up during the
16 training of what corrective measures were taken.
17 So....

18 Q. Okay. I'm going to move down to Page 69.

19 A. Okay.

20 Q. At the top of the page, it says
21 "Contingency Issues." Do you see that heading?

22 A. Yes.

23 Q. Okay. Are the contingency issues that
24 are listed on this page the only contingency issues
25 that you're prepared to address?

1 A. That's the only that I know of. That's
2 the only ones in the protocol.

3 Q. And so what are -- what are the
4 contingencies that you're prepared to address?

5 MR. MITCHELL: Form.

6 THE WITNESS: The interruption of the
7 delivery of the lethal injection drugs or the
8 inmate exhibits signs of conscious --
9 consciousness.

10 BY MS. LEONARD:

11 Q. And is -- is that it?

12 A. Well, that's all that's in the protocol,
13 so that's all I know about.

14 Q. Okay. So if anything were to happen that
15 were -- that was a different problem that's not the
16 interruption of a delivery of lethal injection or the
17 inmate exhibiting signs of consciousness, you wouldn't
18 necessarily be prepared to address that?

19 MR. MITCHELL: Form.

20 THE WITNESS: Depends. Tell me what that
21 is.

22 BY MS. LEONARD:

23 Q. Well, what would happen if there were
24 some sort of medical issues with the inmate?

25 MR. MITCHELL: Objection.

1 THE WITNESS: That's the warden's
2 decision. We have a medical doctor a few feet
3 away. We have three EMTs a few feet away. There
4 is an infirmary inside of Riverbend. Medical
5 would make a decision on what to do.

6 BY MS. LEONARD:

7 Q. When you say "Medical would make a
8 decision," do you mean the physician?

9 MR. MITCHELL: Form.

10 THE WITNESS: No, I mean the official
11 medical personnel.

12 BY MS. LEONARD:

13 Q. Is that all the medical personnel that's
14 present at the execution?

15 MR. MITCHELL: Form.

16 THE WITNESS: No. They work shifts, like
17 any hospital.

18 BY MS. LEONARD:

19 Q. Sorry, I had a little trouble
20 understanding that. Could you repeat the last answer?

21 A. Like at the hospital, they work shifts.
22 The nurses are always there. The doctor, it depends on
23 when it is, so....

24 Q. Okay. And what if there were
25 unanticipated issues with a member of the execution

1 team?

2 MR. MITCHELL: Objection to form.

3 THE WITNESS: Again, we have medical
4 people on site, and so we would deal with that and
5 move on at the warden's direction.

6 BY MS. LEONARD:

7 Q. Is the warden the only person who decides
8 whether to stop an execution?

9 MR. MITCHELL: Form.

10 THE WITNESS: No. You've got the --

11 BY MS. LEONARD:

12 Q. Who else?

13 A. -- gov- -- governor and the commissioner
14 that are in touch with each other to let us know if
15 anybody other -- if anybody can decide.

16 Q. Okay. And what if there were some kind
17 of other issue with your equipment or your supplies?
18 For example, what if the pan-tilt zoom camera you
19 mentioned earlier stopped working in the middle of the
20 execution? What would you do?

21 MR. MITCHELL: Objection.

22 THE WITNESS: I would have the warden --
23 tell him what's going on. I would then send the
24 doctor to the right arm, which is where the issue
25 would be, and ask him to help us watch for any

1 problem.

2 BY MS. LEONARD:

3 Q. And how would you let the warden know
4 that?

5 MR. MITCHELL: Form.

6 THE WITNESS: There's a telephone by the
7 wall, and there's one in the injection room just
8 for that.

9 BY MS. LEONARD:

10 Q. Okay. And I think you just mentioned
11 this briefly early. Have you ever seen a cutdown
12 procedure used?

13 MR. MITCHELL: Form.

14 THE WITNESS: No, we have never used one.

15 BY MS. LEONARD:

16 Q. Do you practice the cutdown procedure
17 during simulations?

18 A. No.

19 Q. And the physician does not participate in
20 the simulations?

21 A. No.

22 Q. Okay. In the middle of the page, it says
23 that the executioner switches to the secondary IV line
24 and then begins the administration of the second set of
25 syringes using the reserve tray.

1 Why would you do this if there's an
2 interruption in the primary line?

3 MR. MITCHELL: Form.

4 THE WITNESS: Because the protocol says
5 to. If there was an interruption, that means the
6 line is no good, ain't working properly. So we go
7 to the backup set, which would be put the backup
8 set in the other arm.

9 BY MS. LEONARD:

10 Q. What would you do if the backup set were
11 not working?

12 A. Let the warden know, and he would close
13 the curtains. And we would do whatever is necessary;
14 get another nine syringes, get the drugs that we need,
15 the saline solution we need, set it up and go from
16 there.

17 Q. And you have enough drugs that you would
18 be able to set up a whole second two sets?

19 A. I think we normally do.

20 Q. Have you ever experienced an execution
21 where neither of the lines worked properly?

22 A. No.

23 Q. And we touched on this before, but it
24 also says that you would switch to the secondary line
25 if the inmate exhibits signs of consciousness. And

1 what is it that you understand is the reason for using
2 that second line?

3 MR. MITCHELL: Form.

4 THE WITNESS: Because the protocol says
5 to. I don't know the reason for that. I just
6 know that's what I am to do.

7 BY MS. LEONARD:

8 Q. If you do that, do you know how much
9 total midazolam is injected into the prisoner?

10 A. I don't know the percentage. I know
11 there would be 20 cc's, or 20 milliliters.

12 Q. So how much is one dose from the red
13 line, for example?

14 MR. MITCHELL: Form.

15 THE WITNESS: You said "dose." Are you
16 talking -- percentage-wise, are you talking
17 premixed or are you talking mixed?

18 BY MS. LEONARD:

19 Q. I'm talking when the midazolam is mixed
20 and it's injected into the prisoner, how much --

21 A. It's 50 cc's per syringe.

22 Q. And how many syringes are there?

23 MR. MITCHELL: Form.

24 THE WITNESS: For midazolam, two.

25 BY MS. LEONARD:

1 Q. Okay. And that's per each set; so two
2 for red and two for blue?

3 A. That's correct.

4 Q. Got it. So if you were to do both sets,
5 the red and the blue, basically you're giving double
6 the amount of midazolam?

7 A. Correct.

8 Q. And what are -- what are the effects of
9 that amount of midazolam on the prisoner?

10 MR. MITCHELL: Form.

11 THE WITNESS: I do not know. I've never
12 done it.

13 BY MS. LEONARD:

14 Q. What -- do you have any idea about what
15 might happen if you'd give someone that much midazolam?

16 A. I do not.

17 Q. Has anyone ever talked to you about
18 injecting someone with that much midazolam?

19 A. They have not.

20 Q. What would you do if the prisoner showed
21 signs of consciousness after the second set of syringes
22 was administered?

23 MR. MITCHELL: Form. Form.

24 MS. LEONARD: Let the warden know.

25 BY MS. LEONARD:

1 Q. And what would you do if the prisoner was
2 not deceased after both sets of syringes were
3 administered?

4 MR. MITCHELL: Form.

5 THE WITNESS: Let the warden know.

6 BY MS. LEONARD:

7 Q. And is the warden the ultimate
8 decision-maker during the executions?

9 MR. MITCHELL: Form.

10 BY MS. LEONARD:

11 Q. What would you do --

12 A. Yes, he is.

13 Q. What would you do if the IV catheter
14 became dislodged?

15 MR. MITCHELL: Form.

16 THE WITNESS: One of them? Both of them?
17 And at what time?

18 BY MS. LEONARD:

19 Q. I'm sorry, could you repeat the last part
20 of that?

21 A. One of them? Both of them? At what
22 time?

23 Q. What would happen if one of them became
24 dislodged?

25 MR. MITCHELL: Form.

1 THE WITNESS: At what point?

2 BY MS. LEONARD:

3 Q. At the point that the drugs are being
4 administered.

5 A. I would stop that line and start again on
6 the other line.

7 Q. And what would you do if that second line
8 became dislodged?

9 MR. MITCHELL: Form.

10 THE WITNESS: Just like we talked before.
11 I'd notify the warden. We would close the
12 curtains and get what we need and start all over
13 again.

14 BY MS. LEONARD:

15 Q. Okay. Are you aware of something called
16 "paradoxical effect?"

17 A. I am not.

18 Q. Have you ever heard that term before?

19 A. I don't think so.

20 Q. You don't think so, or you might have?

21 A. I don't think so. I don't think I've
22 ever heard of that.

23 Q. Has anyone ever used that term with you
24 in discussing executions?

25 A. No, or I would have probably remembered.

1 I've never heard of that.

2 Q. Okay. What happens if the prisoner shows
3 signs of pain during the execution?

4 MR. MITCHELL: Form.

5 THE WITNESS: Signs of pain?

6 BY MS. LEONARD:

7 Q. Yes.

8 A. I wouldn't know. I've never seen that.

9 Q. You --

10 A. It ain't like I'm going to stop it unless
11 the warden -- unless the warden tells me to stop.

12 Q. So even if you saw signs of pain, you
13 wouldn't stop administering the drugs?

14 A. I'm not stopping once it starts. It's
15 like a plane taking off. There's no stopping unless
16 the warden tells me to stop.

17 Q. Okay. I'm going to move into talking
18 about some of the prior executions that you did. I
19 think you mentioned that you were involved in Donnie
20 Johnson's execution; is that right?

21 A. Yes, I was.

22 Q. And you were the executioner in that
23 execution?

24 A. I was.

25 Q. Were you involved in the execution in

1 other -- any other role?

2 A. Pardon me? I don't understand.

3 Q. Did you serve any other role on -- in
4 Donnie Johnson's execution?

5 A. No.

6 Q. And how long did that execution take to
7 complete?

8 A. I don't know.

9 (Exhibit No. 63 marked.)

10 BY MS. LEONARD:

11 Q. If we look at Exhibit 63 -- six-three.

12 A. Okay.

13 Q. Does this help refresh your recollection
14 as to how long the execution took?

15 A. Not really, because I never seen this.
16 This is the first time I've seen this, so....

17 Q. And what -- I should have asked you.
18 What is this?

19 MR. MITCHELL: Form.

20 THE WITNESS: "Day of Execution - Lethal
21 Injection, Recorder Checklist."

22 BY MS. LEONARD:

23 Q. And so who filled this checklist out?
24 Not the name of the person.

25 A. The recorder did. I think it's the

1 recorder that's in the control room and death watch.

2 Q. Okay. And if you scroll down to Page 4,
3 it looks like that's the same form --

4 A. Yes.

5 Q. -- but with different handwriting. Do
6 you see where I'm looking?

7 A. I do.

8 Q. Is that the form that was filled out by
9 the other recorder? I think you'd mentioned there was
10 more than one?

11 A. I do not know. I don't know who fills
12 those out. I don't know. This is the first time I've
13 seen these.

14 Q. Okay. I understand.

15 It says here on Page 2 of this exhibit -- I
16 can wait until you scroll back up.

17 A. Okay.

18 Q. I'm looking sort of about a third of the
19 way down, it says at 1919 the warden orders the
20 execution team to proceed.

21 A. Right.

22 Q. And then the next line says "1935, lethal
23 injection process completed." So what do those times
24 mean?

25 MR. MITCHELL: I'm sorry, which time are

1 you looking at? 1919?

2 MS. LEONARD: 1919, and then 1935 is
3 directly underneath it.

4 MR. MITCHELL: Object to form.

5 THE WITNESS: 1919, that would be the
6 last comment, correct?

7 BY MS. LEONARD:

8 Q. Right. And there's another 1919
9 underneath that, "Warden orders execution team to
10 proceed."

11 A. Okay. What's the question?

12 Q. So I'm wondering -- the question is the
13 line underneath that is "1935, Lethal injection process
14 completed."

15 What happens in between those two lines?
16 So when it says "Warden orders execution team to
17 proceed" and then "Lethal injection process completed,"
18 what are the -- the steps that happen in between those
19 two?

20 MR. MITCHELL: Objection.

21 THE WITNESS: That's when the injection
22 takes place. This is probably a record from
23 someone in the control room in the death watch
24 area. They can't see anything, other than what's
25 in the trailer. So I don't know what he is doing,

1 but that's when we are doing the injection.

2 BY MS. LEONARD:

3 Q. Okay. So 1919 to 1935 is approximately
4 16 minutes. Does that sound right?

5 A. Yes. It all depends on the rate of the
6 push, how fast. You have to take in seven minutes of
7 waiting time. So approximately that sounds right.

8 Q. Okay. And you -- so that sounds -- that
9 would be the time during which all nine syringes are
10 administered?

11 A. Yes.

12 Q. Okay. So that took about 16 minutes from
13 start to finish?

14 A. Probably. Probably -- probably after the
15 first three. And if you had the -- the form that the
16 injection room recorder had, you could see how long it
17 took for each one. But that's the other form.

18 Q. I'm sorry, what was the name of that
19 form, just to make sure I heard you right?

20 A. That's the one that we looked at earlier.

21 Q. All right.

22 A. When the -- when the recorder in there
23 with me when the syringes are prepared, which one is
24 used.

25 Q. Yeah, I got you. So that's Exhibit 62,

1 is that right? If you want to pull up Exhibit 62?

2 A. That's when they were preparing -- when
3 they were administered.

4 Q. So when they were administered.

5 I believe that may be Exhibit No. 61.

6 Let's see if we're thinking about the same form. Can you
7 pull up Exhibit 61?

8 (Exhibit No. 61 marked.)

9 THE WITNESS: Yes.

10 BY MS. LEONARD:

11 Q. Is that what you're talking about?

12 A. Yes.

13 Q. Okay. And so what is this document? And
14 have you seen this document before?

15 A. No.

16 Q. What is this document?

17 A. I know what the document is, but I've
18 never seen this one.

19 Q. What is the document?

20 A. When the chemicals were administered,
21 when they were used.

22 Q. Okay. So when it says in Set 1, "Red,
23 Syringe 1, midazolam, time begin, 1921," what does that
24 mean?

25 A. The midazolam started to push.

1 Q. And the same thing for Syringe 2 and
2 Syringe 3?

3 A. Yes, yes.

4 Q. And it looks like there was that
5 two-minute break there, "Checked at 1925?"

6 A. Yes, yes.

7 Q. Okay. I see.

8 Going back to Exhibit 62, do you still
9 have that one in front of you?

10 A. I do.

11 Q. Okay. That one shows -- we mentioned
12 this earlier -- that the midazolam red set was prepared
13 at 7 -- it looks like 1920, so that's 7:20 p.m.?

14 A. Correct.

15 Q. And you mentioned that the reason that is
16 prepared about two hours later than the other drugs is
17 because of its beyond use date; is that right?

18 A. Correct.

19 Q. And who told you that?

20 A. Who told me what?

21 Q. Who told you that the midazolam has a
22 one-hour expiration or one-hour beyond use date,
23 without giving me the name of that individual?

24 A. It's on the instructions.

25 Q. So no one told you that, but it's in the

1 instructions?

2 A. Yes.

3 Q. Is that the same instructions that we
4 looked at earlier?

5 A. Yes.

6 Q. I think that was Exhibit 2. Sorry to
7 keep you jumping between so many documents here.

8 A. That's all right.

9 Q. If we look at Exhibit 2, the midazolam
10 instructions, can you show me where it says that the
11 midazolam has to be used within an hour?

12 A. The next.

13 (Pause.)

14 THE WITNESS: I don't see it right now,
15 but I know I've seen it somewhere. Maybe so.

16 BY MS. LEONARD:

17 Q. Did you -- do you always wait to prepare
18 the midazolam until last?

19 A. Yes.

20 MR. MITCHELL: Form.

21 BY MS. LEONARD:

22 Q. Okay. And that's because it's going to
23 expire within an hour?

24 A. That's what I thought I read or was told.

25 Q. Okay. Did you -- were you involved in

1 any of the practice sessions leading up to Donnie
2 Johnson's execution?

3 A. Yes.

4 Q. When did those practice sessions take
5 place? I know you might not remember the dates, but do
6 you remember the --

7 A. I don't remember. I don't remember the
8 dates.

9 Q. But do you remember did they happen a
10 week before, a month before?

11 A. I do not.

12 Q. Do you remember how many practice
13 sessions there were leading up to this execution?

14 A. I do not.

15 Q. Was the second dose of midazolam prepared
16 for this execution?

17 A. It was.

18 Q. And how do you know that?

19 A. I did it.

20 Q. Do you get any instructions that are not
21 documented?

22 MR. MITCHELL: Form.

23 THE WITNESS: I don't, no. I don't think
24 so.

25 BY MS. LEONARD:

1 Q. You don't think so? Let me try to ask
2 the question in a different way. When you said, you
3 know, you thought you had read the midazolam beyond use
4 date somewhere, is there some other place besides the
5 instructions that we just looked at that you might know
6 of?

7 A. No. The instructions or anything,
8 instructions or anything through the person that
9 received the drugs through the pharmacies.

10 Q. I'm sorry, I just want to make sure I
11 understand. You said that those instructions are the
12 only thing you receive from that individual?

13 A. They are. But if there's a question,
14 they would contact the person that received the drugs.
15 They'd contact the pharmacist for other clarification.

16 Q. Right. Okay. I remember you said that
17 before.

18 But are there any other instructions that
19 you receive from anyone else -- again, without telling me
20 who the people are? It's just "Yes" or "No," are there
21 any other subsequent instructions?

22 MR. MITCHELL: Form.

23 THE WITNESS: No.

24 BY MS. LEONARD:

25 Q. No? Okay.

1 During Mr. Johnson's execution, what was
2 the rate of injection of the drugs?

3 MR. MITCHELL: Form.

4 THE WITNESS: I don't know.

5 BY MS. LEONARD:

6 Q. Is that just something you did by feel,
7 like you described earlier?

8 A. Always. Always.

9 Q. Let's see. I just want to flip back
10 quickly to Exhibit 44.

11 MR. MITCHELL: Is it 44, 65, or --

12 MS. LEONARD: Yeah, I think that's what
13 we said, is that we were going to rename that one.
14 Although I think that, as the executioner is
15 looking at it, it would probably still say 44 for
16 him.

17 THE WITNESS: So which one?

18 MR. MITCHELL: It should say "Chemical
19 Preparation Time Sheet" at the top.

20 THE WITNESS: What's the date?

21 BY MS. LEONARD:

22 Q. Is the date at the top of that 4/14/21?

23 A. Yes.

24 Q. Okay. So there I'm just trying to
25 understand. It looks like the midazolam was not

1 delayed, and you said that was because it's just saline
2 in the practice?

3 A. Because we just use saline.

4 Q. Okay. So have you ever practiced waiting
5 to do the midazolam until after the other drugs?

6 A. Yes. We practice and use saline, yes.

7 Q. And how -- can you just sort of walk me
8 through what that mixing process is?

9 A. Which one?

10 MR. MITCHELL: Form.

11 BY MS. LEONARD:

12 Q. For the midazolam.

13 A. For the real thing?

14 Q. In the real thing, yes.

15 A. We got the signal to start distribution.
16 When we pull it out of the syringes, 1 and 2 are filled
17 with 45 cc's of saline and placed in the tray, along
18 with the left.

19 When the warden gives the signal it's
20 time to execute, I pick up No. 1, put a needle on it.
21 Insert the needle into the midazolam, draw out 5 cc's
22 of midazolam. Take the needle off. Give it back to
23 the -- excuse me -- recorder, who verifies it is now 50
24 cc's. Puts it in a tray and hands me the second red
25 tray.

1 And the process isn't completed until all
2 four syringes have 50 cc's of saline and midazolam.

3 Q. Okay. That's -- that's helpful to my
4 understanding. And you wait to do that until the
5 warden gives you the signal to proceed during the
6 execution?

7 A. Yes. The -- the four trays of midazolam
8 are completed when he gives the signal to start.

9 Q. Okay. And we touched on this earlier,
10 and I think you said that this -- the midazolam appears
11 to be clear inside the syringes. Is that right?

12 A. Every drug appears, as best as I
13 remember, to be clear.

14 Q. And what's the consistency of that drug?

15 MR. MITCHELL: Form.

16 THE WITNESS: I don't understand the
17 question.

18 BY MS. LEONARD:

19 Q. When you say it's clear, is it foggy, is
20 it cloudy, is it perfectly clear?

21 A. It's clear.

22 Q. It's perfectly clear?

23 A. It's clear.

24 Q. Perfectly clear?

25 A. Best as I recall.

1 Q. Okay. Just a couple more questions about
2 Mr. Johnson's execution.

3 Were Mr. Johnson's fingers taped to the
4 gurney during his execution?

5 MR. MITCHELL: Form.

6 THE WITNESS: As I recall, they were.
7 That's not my main focus.

8 BY MS. LEONARD:

9 Q. Sorry, I didn't catch the end of that?

10 A. They -- I assume they were, but that's
11 not my main focus.

12 Q. I see. Okay. Did you observe any
13 movement of Mr. -- of Mr. Johnson's fingers during the
14 execution?

15 A. No.

16 Q. Did you observe any other movement from
17 Mr. Johnson during the execution?

18 A. No.

19 MS. LEONARD: Okay. I'm going to switch
20 over. This could be an okay stopping point for a
21 break if you want, although I don't think we'll go
22 tremendously much longer. It's your call. How
23 are you feeling, Executioner?

24 THE WITNESS: I'm fine.

25 MR. LEONARD: Would you like to keep

1 going?

2 THE WITNESS: I'm fine if we do.

3 MS. LEONARD: And Mr. Mitchell, are you
4 okay with that, or do you want to take a --

5 MR. MITCHELL: Continuing is good, yeah.

6 MS. LEONARD: Okay. If you change your
7 mind and if you want a break at any time, please
8 don't hesitate to ask.

9 THE WITNESS: Yes, ma'am. I'm fine.

10 BY MS. LEONARD:

11 Q. I'm going to switch over to talking about
12 the Billy Ray Irick execution. You said that you were
13 the executioner for his execution, too; is that right?

14 A. Yes, ma'am.

15 Q. Were you involved in that execution in
16 any other capacity?

17 A. No.

18 Q. How long did that execution take?

19 A. I do not recall.

20 (Exhibit No. 57 marked.)

21 BY MS. LEONARD:

22 Q. If we look at Exhibit 57, five-seven.

23 A. Right.

24 Q. You got it?

25 A. Yes, I do.

1 Q. Okay. Have you seen this document
2 before?

3 A. No.

4 Q. What is this document?

5 A. "Day of Execution - Lethal Injection
6 Execution Recorder Checklist."

7 Q. Okay. And so if we scroll to the second
8 page of that, it looks about a third of the way down,
9 "1928, Warden orders execution team to proceed."

10 A. Okay.

11 Q. And then "1946, Lethal injection process
12 completed?"

13 A. Okay.

14 Q. Is that the same that we just discussed
15 with respect to Mr. Johnson's execution? That's the
16 amount of time in which it took --

17 A. Yes.

18 Q. -- to administer all nine syringes?

19 MR. MITCHELL: Objection.

20 THE WITNESS: Well, I assume that. This
21 form is filled out in the death watch area. They
22 can only see what they see through the camera. So
23 if they see that the warden gives the order to --
24 or motion to start the execution, they can see it.

25 They can also see when the white block

1 appears in the window, and they know what that
2 means.

3 But I don't know what else they can see.

4 BY MS. LEONARD:

5 Q. Tell me what --

6 A. Nothing that goes on inside the injection
7 room.

8 Q. So they watch everything on the camera?

9 A. Yes.

10 Q. Okay. Have you ever been in the death
11 watch area, watching from the camera?

12 A. I've always been the executioner.

13 Q. Okay. What did you observe during Billy
14 Ray Irick's execution?

15 A. Nothing unusual.

16 Q. Well, what do you mean by "unusual?"

17 A. If you remember something from something
18 like that, it is because something -- especially after
19 you've done 12, 10, 13. Unless there's something
20 unusual about it, there's nothing -- nothing to
21 remember. There's nothing. It's not like -- there's
22 not. There's nothing rememberable about it.

23 Q. Do you remember what Billy Ray Irick
24 looked like?

25 A. I do.

1 Q. And do you remember if he moved during
2 the execution?

3 A. I do not remember anybody ever moving
4 during -- after the first syringe is started.

5 Q. And when you say "anybody," you mean
6 anyone that's ever been executed that you've
7 participated in?

8 A. Usually, after the first syringe is
9 administered, all movement, all sound -- except maybe a
10 snore -- stops.

11 Q. And who did -- who did you hear snoring
12 during an execution?

13 A. I've heard many.

14 Q. And how many is "many?"

15 A. I don't know. I have no idea. Somewhere
16 between three and six.

17 Q. Okay. So would you consider that a
18 normal sign during an execution?

19 A. I've heard -- when I've talked to the
20 people in other states that I've visited, it seems to
21 be normal. Some do and some don't.

22 Q. Okay. And so that doesn't give you any
23 cause for concern, that the inmate snores?

24 A. It does not.

25 Q. Did you notice Mr. Irick, did he snore?

1 A. I do not recall.

2 Q. Do you recall if he was coughing at all?

3 A. I do not recall.

4 Q. Do you remember if he made any other sort
5 of movement of his head?

6 A. Not that I recall.

7 MS. LEONARD: I'm going to pull up
8 Exhibit 60, six-zero.

9 (Exhibit No. 60 marked.)

10 THE WITNESS: Okay.

11 BY MS. LEONARD:

12 Q. At the top of this document, it says
13 "Declaration of David A. Lubarsky, M.D." Is that what
14 you're looking at?

15 A. Yes, it is.

16 Q. Have you ever seen this document before?

17 A. I have not.

18 Q. Okay. Do you want a second to look
19 through it?

20 A. Okay.

21 Q. Just let me know. You can take your
22 time, but let me know when you're ready to talk about
23 it.

24 (Pause.)

25 THE WITNESS: Okay.

1 BY MS. LEONARD:

2 Q. I'm looking in particular at Item 3 on
3 Page 1.

4 A. Okay.

5 Q. It starts with "The official media
6 witnesses."

7 A. Okay.

8 Q. It says that:

9 "The official media witnesses described
10 physical behavior of Mr. Irick after the
11 drugs were administered that I recognized
12 to be signs that Mr. Irick was not in the
13 plane of surgical anesthesia during his
14 execution. This is important, because an
15 inmate who is not placed in a plane of
16 surgical anesthesia is not protected from
17 the subsequent torturous effects of the
18 lethal injection process. These signs and
19 indicators include that Mr. Irick, quote,
20 gulped for an extended period of time, end
21 quote; was, quote, choking and gasping,
22 coughing; and that, quote, his stomach was
23 moving up and down, end quote. Published
24 media accounts report, quote, Irick did
25 appear to react physically to the

1 vecuronium bromide. He jolted and produced
2 what sounded like a coughing or choking
3 noise. He moved his head slightly and
4 appeared to briefly strain his forearms
5 against the restraints. End quote.

6 And that came from Steven Hale in an
7 article that he wrote in the "Nashville Scene" on August
8 10, 2018.

9 Does that refresh your recollection seeing
10 Mr. Irick move during the execution?

11 MR. MITCHELL: Objection, form.

12 THE WITNESS: I do not -- I do not recall
13 any of that. I don't know how anybody would know
14 when that drug was administered, because of the
15 time it takes to prepare the midazolam and how
16 long it took to administer each drug, to say
17 anything other than -- I'm interested in how they
18 get their timeline, but that's not for me to
19 decide.

20 All I remember is nothing turned out any
21 different about Billy Irick opposed to anybody
22 else. They've all been basically the same, other
23 than occasionally you'll get a snoring sound from
24 some of them.

25 BY MS. LEONARD:

1 Q. Okay. But you don't remember any sort of
2 choking, gasping, or coughing?

3 A. I do not.

4 Q. Do you have any idea where the media
5 witnesses might have gotten this idea?

6 A. No, ma'am; I do not.

7 Q. And when the doctor explains that the
8 inmate who's not placed in a plane of surgical
9 anesthesia is not protected from the subsequent
10 torturous effects, do you know what that means?

11 A. No, ma'am; I do not.

12 Q. I think what the doctor's trying to say
13 there is that the inmate who is not completely
14 unconscious may feel the effects from the second and
15 third drug. Does that make sense to you?

16 MR. MITCHELL: Form.

17 THE WITNESS: I don't know. I don't know
18 how anybody would know, other than people in the
19 room, when the second and third drugs were exactly
20 administered.

21 BY MS. LEONARD:

22 Q. Right. But if it's the case that the
23 second drug and/or the third drug caused someone to
24 feel torturous pain, it would be important for the
25 first drug to make an anesthetic effect, right?

1 A. Right, and that's the reason we take the
2 two minutes and the warden does his check to see if
3 anyone reacts before we start the second syringe.

4 Q. And if it is medically possible for
5 someone to be feeling those torturous effects, even if
6 they're not making any movement, does that bother you?

7 MR. MITCHELL: Form.

8 THE WITNESS: I follow the protocol as it
9 is written. And what I have seen out of all the
10 executions I've been involved with, I've not seen
11 anything that gives me pause.

12 BY MS. LEONARD:

13 Q. And if you ever did see something that
14 gave you pause, what would you do?

15 A. You would have to wait for that to
16 happen. I can't sit here and say what would happen or
17 what I would do.

18 Q. And what if you learned that they are
19 feeling pain, even though you can't see anything?

20 MR. MITCHELL: Object to form.

21 THE WITNESS: I don't know.

22 BY MS. LEONARD:

23 Q. You don't know what you would do?

24 A. No.

25 Q. Would you feel differently about the

1 execution process?

2 MR. MITCHELL: Same objection.

3 THE WITNESS: I don't know. I can't
4 answer that.

5 BY MS. LEONARD:

6 Q. Why do you think it is that the media
7 witnesses said that they saw all these signs in
8 Mr. Irick?

9 MR. MITCHELL: Same objection.

10 THE WITNESS: I do not know.

11 BY MS. LEONARD:

12 Q. Did anyone else on the execution team see
13 Mr. Irick make any of those movements?

14 MR. MITCHELL: Same objection.

15 THE WITNESS: You would probably have to
16 ask them. I never heard nobody mention anything
17 of the sort.

18 BY MS. LEONARD:

19 Q. When you had the follow-up meeting with
20 the warden after the execution, did anyone talk about
21 seeing Mr. Irick make any movements or choking or
22 coughing?

23 MR. MITCHELL: Object to the form.

24 THE WITNESS: Not that I recall.

25 (Exhibit No. 59 marked.)

1 BY MS. LEONARD:

2 Q. I'll now introduce Exhibit 59, five-nine.

3 A. Okay.

4 Q. Have you ever seen this document before?

5 A. No, ma'am.

6 Q. Do you want a minute to look through it?

7 A. Is that Billy Ray apologizes? Is that
8 what you're talking about?

9 Q. Yes. The title at the top says
10 "Tennessee Inmate Billy Ray Irick Apologizes Before
11 Being Executed."

12 A. Okay.

13 (Pause.)

14 THE WITNESS: Okay, I'm good.

15 BY MS. LEONARD:

16 Q. Okay. On the bottom of Page 2, there's a
17 paragraph underneath the photo of Mr. Irick. There's a
18 paragraph that starts, "Then the execution proceeded."
19 Do you see the paragraph I'm looking at?

20 A. Yes, I do.

21 Q. It says: "Then the execution" --

22 A. Yes, yes.

23 Q. Okay. "Then the execution proceeded. A
24 minute later his eyes closed. Snoring and heavy
25 breathing were heard. At 7:34 p.m., there was

1 coughing, huffing, and deep breaths. An attendant
2 began yelling 'Billy,' and checked the inmate and
3 grabbed his shoulder, but there didn't seem to be any
4 reaction. Minutes later, Irick let out a cough or
5 choking sound as his face turned dark purple. Then he
6 appeared to stop making noise and was soon after
7 pronounced dead."

8 Do you remember Mr. Irick snoring?

9 A. I don't remember. I don't recall it.

10 Q. Do you remember seeing his face turn dark
11 purple?

12 A. No. But I will say the number of
13 executions I've seen, I've seen some people turn red.
14 I've seen some turn ashen color. I think everybody --
15 they all seem to react a little different. But I don't
16 remember anything unusual about Billy Irick.

17 Q. So you would consider turning purple or
18 turning red or turning ashen, is that what you said,
19 you would consider that normal?

20 MR. MITCHELL: Form.

21 THE WITNESS: Some are different. I
22 don't know if it's normal, but I don't see
23 anything outstandingly unusual about it.

24 BY MS. LEONARD:

25 Q. Okay. So it wouldn't be -- so this is an

1 article from the Associated Press. So if the media
2 witness saw Mr. Irick's face turn dark purple, you
3 would say that that's not unusual?

4 MR. MITCHELL: Form.

5 THE WITNESS: I'd say not to me. What --
6 what does "turning purple" mean? What does that
7 mean? I don't know what that means. So it may
8 turn purple, but what -- what caused it to turn
9 purple? Was it because he was -- because he was
10 dead, or what caused it?

11 BY MS. LEONARD:

12 Q. I'm not sure. It sounds like from this
13 that he was still making noise, so I assume he was
14 still alive when his face turned purple.

15 A. I just don't see anything in the whole
16 process. I haven't seen -- I have not seen anything
17 where I thought myself that the inmate was feeling
18 anything.

19 Q. Okay. But you've watched the process the
20 entire time?

21 A. I watch each and every one of them from
22 beginning to end.

23 Q. And were Mr. Irick's fingers taped to the
24 gurney during his execution?

25 MR. MITCHELL: Form.

1 THE WITNESS: I cannot say 100 percent,
2 but all of them should be or are.

3 BY MS. LEONARD:

4 Q. Okay. And whose job is it to make sure
5 they are?

6 A. The attendant we talked about that goes
7 in with the EMTs, that's their duty.

8 Q. The person who pushes the equipment cart?

9 A. Yes; yes, that's him.

10 Q. Okay. Did you prepare the lethal
11 injection chemicals for Mr. Irick's execution?

12 A. I did.

13 Q. Did you prepare a second dose of the
14 midazolam?

15 A. I did.

16 Q. I'm going to take a look at Exhibit 58 --
17 five eight.

18 (Exhibit No. 58 marked.)

19 (Pause.)

20 THE WITNESS: Okay.

21 BY MS. LEONARD:

22 Q. Have you seen this document before?

23 A. Didn't we look at this a few minutes ago?

24 Q. We looked at one that was similar for
25 Mr. Johnson, I believe. I do not believe we looked at

1 this document yet.

2 A. Because other than what I saw a few
3 minutes ago, it would be the first time I seen it.

4 Q. Okay. And do you know what this document
5 is?

6 A. Yeah, for the lethal injection and for
7 the -- yeah, the chemicals are mentioned.

8 Q. Okay. And so this -- I think you
9 explained this to me before about Donnie Johnson's
10 execution. But is this the record of the lethal
11 injection chemicals that were administered?

12 A. This is -- it should be. The recorder
13 next to me should record the times when they were
14 injected; yes, ma'am.

15 Q. Okay. And when you go to Page 2 of this
16 document, it says in the handwriting, sort of in the
17 blank section there, "Not used." What does that mean?

18 A. That's Set No. 2. It wasn't used.
19 That's a backup set.

20 Q. Okay. And then on Page 3, I think we
21 looked at one of these, at least one of these, earlier
22 on today. I don't believe we looked at Mr. Irick's.
23 But is this the Chemical Preparation Time Sheet that
24 describes when the drugs are prepared?

25 A. It appears to be; yes, ma'am.

1 Q. And so when the drugs are prepared, the
2 lethal injection recorder makes sure to record that
3 time?

4 A. Yes.

5 Q. And then --

6 A. The midazolam was prepared two hours
7 later, yes.

8 Q. Okay. I think we're looking at the same
9 thing, because it says the midazolam was prepared at
10 1928 and the vecuronium bromide was at 1724?

11 A. Yes, ma'am.

12 Q. And then the last page, Page 4, it has
13 the blue set. Do you see where I'm looking?

14 A. I do.

15 Q. And it shows there that the vecuronium
16 bromide was prepared at 1752, the potassium chloride
17 prepared at 1756, the saline was prepared at 1738. And
18 it says "Midazolam not used." Do you see that?

19 A. I do.

20 Q. What does that mean, that the midazolam
21 was not used?

22 A. I have no idea. I didn't fill the form
23 out. It probably wasn't used, but it was prepared.

24 Q. I'm sorry, you said it wasn't used but it
25 was prepared?

1 A. It's -- yes, I always prepare it.

2 Q. How do you know that it was prepared?

3 A. I prepare it.

4 Q. Is that documented on any logs anywhere?

5 A. It should be right there.

6 Q. It should be right there?

7 A. That's the whole point of this form, yes.

8 Q. And can you think of any reason why it's
9 not there?

10 A. No, ma'am, because I don't do the form.
11 I do the preparation.

12 Q. Okay. Are there any other forms that
13 document whether the second set of chemicals was
14 prepared?

15 A. No.

16 Q. And were you involved in any of the
17 practice sessions leading up to Mr. Irick's execution?

18 A. I don't recall. Probably all of them.

19 Q. Do you remember how many of them there
20 were?

21 A. No, ma'am.

22 Q. And I asked you this question about
23 Mr. Johnson. I'll ask again for Mr. Irick. Did you
24 measure the rate of injection of midazolam?

25 A. There's no rate of injection. I don't

1 understand what that is. That's -- we're talking
2 about, again, the size of the catheter, which vein was
3 used, how fast or slow it's pushed would determine how
4 it filled.

5 Q. Okay. And how long was the tubing that
6 was used in Mr. Irick's execution?

7 MR. MITCHELL: Form.

8 THE WITNESS: I do not recall. I'm
9 assuming that we used somewhere around 120 inches.

10 BY MS. LEONARD:

11 Q. Is that documented anywhere?

12 A. No, I don't think so.

13 MR. MITCHELL: Form.

14 MS. LEONARD: Okay. I think this might
15 be a good stopping point for just a short break,
16 maybe a 10-minute break, until 5:00 Eastern/4:00
17 Central.

18 THE VIDEOGRAPHER: We're off the record
19 at 3:49 p.m.

20 (Recess at 3:49 p.m. to 4:01 p.m.)

21 THE VIDEOGRAPHER: We're back on record
22 at 4:01 p.m.

23 MS. LEONARD: Thanks for bearing with me,
24 Executioner. I think we're getting close to the
25 end. I just have a couple more questions for you.

1 BY MS. LEONARD:

2 Q. I want to go back to Exhibit 2.

3 A. Okay.

4 Q. These are the midazolam storage and
5 preparation instructions. Earlier, we read the first
6 paragraph that talked about 24 hours at room
7 temperature; three days at cold temperature,
8 refrigerated; and 24 days frozen.

9 When you go to retrieve the drugs with
10 the warden prior to the execution, are they at room
11 temperature?

12 A. No, they're in the refrigerator.

13 Q. They're in the refrigerator at that
14 point?

15 A. Yes, yes.

16 Q. Okay. And how do you know that they're
17 not still frozen?

18 A. Because you can see the liquid move
19 inside.

20 Q. Are you the individual that moves the
21 vials from the freezer to the refrigerator?

22 A. No.

23 Q. Who does that, without giving me their
24 name?

25 A. Well, it has to be the warden, because

1 he's the only one that got a key to it.

2 Q. Okay. So the first time that you ever
3 see the lethal injection drugs is when you pull them
4 from the refrigerator?

5 A. No. Sometimes when they're delivered to
6 the institution, like we talked about earlier today, I
7 like to be there to see if anything has changed. What
8 kind of vials are they in, the size of the vials. Are
9 there any instructions, special instructions, come with
10 them.

11 But I try and like to be there, and I
12 think most every time I have been, just to see what we
13 have and how I need to prepare them at practice.

14 Q. Okay. So you see them when they're first
15 delivered?

16 A. Yes.

17 Q. And then -- and then you sometimes see
18 them at practices?

19 A. Yes.

20 Q. Some of that was a little garbled, but I
21 think I got it.

22 A. I see them at practice, I see them when
23 they're delivered, I see them when we pick them up to
24 use them.

25 Q. On the night of the execution, you mean?

1 A. Yes, yes.

2 Q. Okay. And do they look different between
3 those two points?

4 A. No.

5 Q. Okay. So when you pick them up out of
6 the refrigerator, they look basically the same as when
7 they were delivered?

8 A. No. When they are delivered, at the time
9 it's frozen and put in the freezer. Now, when I pick
10 it up to use it, they've moved from the freezer down to
11 the refrigerator and they're not frozen anymore.

12 Q. Okay. I see. But you're not the person
13 who makes that move, though, right?

14 A. No, I'm not.

15 Q. And I just had another follow-up question
16 for you about the photos. You mentioned that there
17 were not photos before the execution in the execution
18 chamber; is that right?

19 A. That's correct.

20 Q. Are there any photos taken in the lethal
21 injection room before the execution?

22 A. There are no photos or cameras or
23 cellphones allowed in the execution area. That's the
24 chamber, the lethal injection, where he's housed three
25 days before execution. None of those are allowed.

1 The -- the medical examiner's office
2 shows up to get the body, and they take pictures then
3 before he is taken to the medical examiner's office.

4 Q. Right, I remember you saying that. But
5 the medical examiner's office is not allowed to take
6 any other photos, aside from those photos at the end?

7 A. At the end, right. That's the only
8 time -- they don't see the inmate until we get ready to
9 place him in the body bag, and they start taking
10 pictures and examine the body.

11 Q. Okay. And does the medical examiner ever
12 take pictures of the syringes?

13 A. I don't know if it's the medical
14 examiner, somebody from your office. And I don't
15 remember them taking pictures of the syringes. I don't
16 remember. It don't mean he didn't. I just don't
17 remember.

18 Q. So it's possible that someone from the
19 medical examiner's office does take photos of the
20 syringes?

21 A. Could be. I don't recall.

22 Q. Would that be before the execution?

23 A. Taking the pictures? No. There's no
24 cameras, no cellphones, no nothing allowed in that area
25 until the coroner's -- the medical examiner's office

1 has access to take pictures after the execution.

2 Q. Okay. I think I -- I've got you. So no
3 one from the medical examiner's office is allowed to
4 come in until the execution is completed?

5 A. They're in a holding area close to the
6 execution chamber. They're not in contact with the
7 inmate or anything.

8 Q. Okay. And they're not -- and they don't
9 interact with you at all?

10 A. No, because I'm in the room.

11 Q. Okay.

12 A. I'm in that room for a while.

13 And, now, could they make contact in the
14 area where they are? Could they? I'm not -- I'm busy.
15 I'm in the room busy, doing what I do.

16 Q. Right. So they're -- so they're not in
17 the lethal injection room with you while you're
18 preparing the drugs?

19 A. The lethal injection room is big enough
20 for three people. That's it.

21 Q. And the three people are you, the
22 recorder, and the observer and never anyone else?

23 A. That's correct.

24 Q. Okay. And no one ever takes photos of
25 what the three of you are doing in there?

1 A. No, they better not take photos of
2 anything that has to do with the -- with the -- any
3 execution, other than the coroner's office takes
4 pictures when they pick up the body.

5 Q. Why is it so important that no one take
6 any of those pictures before the execution?

7 A. I'm not real sure, but I think it has to
8 do with state law.

9 Q. Do you think there's a state law that
10 prohibits taking photos before an execution?

11 A. Well, when you say "before," I don't know
12 how much you mean "before." While he's on death watch,
13 the execution and all that, I think so.

14 Q. Okay. Are you aware that some states
15 perform executions by firing squad?

16 MR. MITCHELL: Form.

17 THE WITNESS: I've heard they have.

18 BY MS. LEONARD:

19 Q. I'm sorry, could you repeat that answer?

20 A. I've heard they have.

21 Q. Do you know which states they are?

22 A. No, I do not.

23 Q. Do you know how many states allow that?

24 A. I do not.

25 Q. Do you carry a firearm?

1 A. I do not.

2 Q. Do you carry a firearm at work?

3 A. I do not.

4 Q. Do you have any firearms training?

5 A. I do.

6 Q. When did you complete firearms training?

7 A. I did it for a number of years. Now,
8 it's been two or three years since I have had a
9 requalification. But I know about firearms, yes.

10 Q. Okay. And are you required to do that as
11 part of your job?

12 A. Not for my job.

13 MR. MITCHELL: Objection. Objection.
14 I'm going to instruct you not to answer,
15 Executioner.

16 THE WITNESS: Okay.

17 BY MS. LEONARD:

18 Q. Without --

19 MR. MITCHELL: Pursuant to the protective
20 order.

21 BY MS. LEONARD:

22 Q. Without -- without specifically
23 identifying anyone, do you know of anyone at TDOC
24 that's qualified to use a firearm?

25 A. I know a lot of people are.

1 Q. A lot of people are, you said?

2 A. Yes.

3 Q. Okay. And does TDOC provide firearms
4 training?

5 A. They do.

6 Q. Does TDOC have access to firearms?

7 A. They do.

8 Q. Does TDOC have access to a shooting
9 range?

10 A. They do.

11 Q. Does TDOC own firearms?

12 MR. MITCHELL: Objection to form.

13 THE WITNESS: Do they -- do they own
14 them?

15 BY MS. LEONARD:

16 Q. Yes.

17 A. They have -- yeah, the department has
18 firearms.

19 Q. Okay. And does the TDOC have access to
20 ammunition?

21 A. Yes.

22 Q. Does the TDOC have facilities where a
23 firing execution -- squad execution could take place?

24 MR. MITCHELL: Form.

25 THE WITNESS: I don't know what that

1 entails.

2 BY MS. LEONARD:

3 Q. Could the TDOC use the firing -- the
4 shooting range that you mentioned before to conduct a
5 firing squad execution?

6 MR. MITCHELL: Objection to for.

7 THE WITNESS: I don't see how, because
8 you have to allow if there are witnesses. You
9 have to allow victims, witnesses. And there's a
10 lot more to it than just shooting somebody.

11 BY MS. LEONARD:

12 Q. And so there wouldn't be room for that in
13 the current shooting range?

14 A. No. Not the way it is now, no.

15 MR. MITCHELL: Form.

16 BY MS. LEONARD:

17 Q. Not the way it is now? Okay.
18 Could the TDOC execute somebody by firing
19 squad?

20 MR. MITCHELL: Same objection.

21 THE WITNESS: Could they?

22 BY MS. LEONARD:

23 Q. Could they, yes?

24 A. Is that a question? Do I answer that?

25 Q. You have to answer that, yeah.

1 MR. MITCHELL: You can answer, yes.

2 THE WITNESS: I think it would require a
3 change in state law. So no; until the law is
4 changed, no.

5 BY MS. LEONARD:

6 Q. And if the law changed, would the TDOC be
7 allowed to do it?

8 MR. MITCHELL: Same objection.

9 THE WITNESS: What? If -- if it's the
10 law, that's what we do.

11 BY MS. LEONARD:

12 Q. Okay. And if the law said Tennessee was
13 going to use a firing squad, would you be willing to
14 act as the executioner in that protocol?

15 MR. MITCHELL: Form.

16 THE WITNESS: When you say "firing
17 squad," I don't know how that works. How does
18 that work? Is that one person, six people? One
19 loaded gun, six loaded guns? We're inside,
20 outside? Outside in the rain, the cold? Inside,
21 where there's chance of ricochet?

22 There's a lot of factors that would go in
23 to making that decision.

24 BY MS. LEONARD:

25 Q. So whether or not you were willing to

1 participate would depend on the answer to those
2 questions?

3 A. That, and probably a few more.

4 Q. Okay. And what if the execution protocol
5 under the state law were to execute someone by a single
6 bullet to the back of the head? Would you be willing
7 to be the executioner for that protocol?

8 MR. MITCHELL: Form.

9 THE WITNESS: Those are the same
10 questions that I would have for a firing squad.

11 BY MS. LEONARD:

12 Q. What if it were outside?

13 MR. MITCHELL: Form.

14 THE WITNESS: Outside? Where are you
15 going to put the witnesses? How did you protect
16 that from news media coverage with drones? And
17 now there's -- there's a lot of things to
18 consider.

19 I've heard of people getting shot in the
20 head and surviving.

21 BY MS. LEONARD:

22 Q. Well, let's assume that all those -- the
23 issues with the media and the witnesses were accounted
24 for, so there was a way that the witnesses could view
25 it; but no else who's not allowed to would be able to

1 see it, just like it is now for the lethal injection.

2 If that were the case, assuming that,
3 would you be willing to be the executioner who executes
4 someone by a single bullet in the back of the head?

5 MR. MITCHELL: Form objection.

6 THE WITNESS: We would have to cross that
7 bridge when we got do it.

8 BY MS. LEONARD:

9 Q. Would you consider it?

10 MR. MITCHELL: Form objection.

11 THE WITNESS: I would consider anything,
12 but we would have to cross that bridge when we got
13 to it.

14 BY MS. LEONARD:

15 Q. Okay. And when you say you would
16 consider anything, if the state law were a different
17 set of drugs -- so something other than midazolam,
18 vecuronium bromide, and potassium chloride -- would you
19 still be willing to act as the executioner?

20 MR. MITCHELL: Form objection.

21 THE WITNESS: If the warden and the
22 commissioner asked me to, and state law, yes.

23 BY MS. LEONARD:

24 Q. Okay. And what if the state law were
25 such that they took away the vecuronium bromide so all

1 you used was the midazolam and potassium chloride?

2 Would you still be willing to act as the executioner?

3 MR. MITCHELL: Same objection.

4 THE WITNESS: I don't know what the drug
5 does or doesn't do or how that affects anything.
6 I don't know.

7 All I can tell you, if the State passes a
8 law that that's allowed, the warden or
9 commissioner, whoever asked me to continue doing
10 what I'm doing, I would.

11 BY MS. LEONARD:

12 Q. And would that be true even if the drugs
13 were administered orally instead of by injection?

14 MR. MITCHELL: Same form objection.

15 THE WITNESS: When you say "administered
16 orally," there'd be no need for an executioner.
17 They could take them themselves, I would think.

18 BY MS. LEONARD:

19 Q. Well, would you be willing to make -- to
20 be the person who mixed up the drugs if that were
21 required?

22 MR. MITCHELL: Same objection.

23 THE WITNESS: If the state law and the
24 warden and commissioner asked me to do -- to
25 continue doing what I do, I would.

1 BY MS. LEONARD:

2 Q. Okay. And you raise an interesting
3 point, that maybe the inmate could do it by themselves.
4 Do you think that would be a good idea?

5 MR. MITCHELL: Same objection.

6 THE WITNESS: It don't matter what I
7 think. It is what state law thinks and what I am
8 asked to do.

9 BY MS. LEONARD:

10 Q. But you participated in creating this
11 protocol, right?

12 A. I was asked to tell the part I do in
13 setting up the lines and having witnesses, as many as I
14 seen, to develop some of the procedures.

15 Q. Okay. And if the state law and the
16 warden and commissioner decided they were going to use
17 a different protocol, such as an oral -- an oral
18 administration of drugs, would you want to be involved
19 in that process?

20 A. I never asked to be in another one.

21 MR. MITCHELL: Objection.

22 THE WITNESS: They -- they told me I
23 would be. So if they told me I would be, I would
24 be.

25 MS. LEONARD: Okay. I think we're almost

1 at the end of this deposition. Is it okay if we
2 just go off the record for maybe five minutes,
3 just so I can consult with my cocounsel here?

4 MR. MITCHELL: Sure thing.

5 MS. LEONARD: Okay. Great.

6 THE VIDEOGRAPHER: We're off the record
7 at 4:15 p.m.

8 (Recess at 4:15 p.m. to 4:23 p.m.)

9 THE VIDEOGRAPHER: We're back on record
10 at 4:23 p.m.

11 BY MS. LEONARD:

12 Q. Executioner, is there anything that you
13 said here today that you feel the need to clarify?

14 A. Nothing comes to mind right now.

15 Q. Okay. Or anything that you need to
16 restate or otherwise add to?

17 A. No. Maybe the fact that I should have
18 said it a different way or something, but no. I was
19 sitting here thinking, and I -- I can't think of a
20 thing, no.

21 Q. It's funny how that works.

22 A. Yeah.

23 Q. Did you take any notes during the
24 deposition today?

25 A. I have not.

1 Q. And did you take any -- do you have any
2 documents in the room with you, other than the ones
3 that we discussed together?

4 A. I don't have any.

5 Q. Okay. So just the exhibits that we used,
6 and that's it?

7 A. Just what you used on the computer.

8 MS. LEONARD: Okay. Great. I think
9 that's all that I have.

10 MR. MITCHELL: Okay. Thank you.

11 THE VIDEOGRAPHER: Okay. We're off
12 record. The time is 4:24 p.m.

13 (Proceedings concluded at 4:24 p.m.)
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF TENNESSEE

COUNTY OF KNOX

I, Rhonda S. Sansom, RPR, CRR, CRC, LCR #685, licensed court reporter in and for the State of Tennessee, do hereby certify that the above videotaped videoconference deposition of EXECUTIONER was reported by me and that the foregoing 296 pages of the transcript is a true and accurate record to the best of my knowledge, skills, and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this action.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.



Rhonda S. Sansom, RPR, CRR, CRC
Tennessee LCR# 0685
Expiration Date: 6/30/22

RhondaSansom@gibsonreporters.com
2021.09.02 16:00:41

Signer:
CN=RhondaSansom@gibsonreporters.com

Gibson Court Reporting